Columbus City Attorney
RICHARD C. PFEIFFER, JR.

Police Legal Advisor
120 Marconi Blvd., Columbus, Ohio 43215
614-645-4530 Fax 645-4551 www.ColumbusCityAttorney.org

2014 In-Service Legal Update Training

Jeffrey S. Furbee (Jfurbee@columbuspolice.org) and Deana R. Overking (doverking@columbuspolice.org) March-May 2014

Table of Contents

I. Consensual Encounters 2-3
II. Reasonable Suspicion, Detentions/*Terry* Stops, Pat-Downs 3-8
III. Mental Health Seizures 8
IV. Use of Force to Detain/Arrest—Civil Liability 8-14
V. Detention/Arrest/PC Decisions—Civil Liability 14-15
VI. Arrest Warrants and Search Warrants 16-19
VII. Consent to Search and Consent to Enter 19-20
VIII. Exigent Circumstances and Home Entries 21-24
IX. Searches Incident to Arrest/Protective Sweeps of Homes 24-25
X. Miscellaneous Non-Consensual Warrantless Searches 25
XI. Vehicle Searches and Sweeps 25-30
XII. Detentions at Crime Scenes 30-31
XIII. Photo Arrays and Identifications 31
XIV. Miranda and Right to Counsel 31-33
XV. Domestic Violence and Family Law 34-46
XVI. Assault on Police Officer 46-47
XVII. Child Enticement 47
XVIII. Officer Exposure to Bodily Substances 47-48
XIX. Obstructing Official Business 48
XX. Placarded Structures 49
XXI. Shopkeeper's Privilege 49
XXII. First Amendment Issues 49-52
XXIII. Second Amendment/Guns/CCW 52-57
XXIV. Exculpatory Evidence 57-58
XXV. Civil Liability Related to Cruiser Accidents 58-59
XXVI. Miscellaneous Legislation Impacting Patrol 59-70

Legal Update

I. Consensual Encounters

Questions You Should Consider About Consensual Encounters:

Q. Was the encounter really consensual—would a reasonable person have thought they were free to go, and were they? How did you approach the person? How many officers involved? Was there a show/use of force? What did you say to the person to initiate the contact? Did you give the person any orders or accuse them of a crime upon contact? Did you block the person's path/block their car or surround them? Did you use lights and/or sirens or other audible signal to initiate/continue encounter or pull close to them with cruiser? Did you obtain I.D, and if so, what occurred while you had I.D?

Q. If you transitioned from a consensual encounter to a detention, was it supported by reasonable suspicion? Was "lack of cooperation" with consensual encounter the basis for the reasonable suspicion? Did you articulate all of this on your paperwork?

***United States v. Hinojosa*, 2013 FED App. 0247P (6th Cir.)**

Police may approach individuals and propose initial questions without having reasonable suspicion, if the police do nothing to convey to the individual that he is not free to leave.

***United States v. Falls*, 2013 FED App. 0676N (6th Cir.)**

Calling out to someone to come over to talk does not constitute a seizure. Under the totality of the circumstances the officer's use of the words "stop" and "come here," without any other evidence of coercion, did not convert the consensual encounter into a seizure.

***State v. McDowell*, 2013 Ohio 5300 (10th App. Dist)**

Request to examine one's identification does not make an encounter nonconsensual. Officer did nothing to make McDowell feel he couldn't leave. After officer asked McDowell for I.D, and he produced I.D, officer wrote down information and returned I.D. *before* asking incriminating questions. Officer was no longer holding I.D. when he asked McDowell if he had weapons.

***State v. Goodloe*, 2013 Ohio 4934 (10th App. Dist)**

Blocking one's path to leave is conduct which indicates that a seizure/*Terry* stop has occurred.

***State v. Massey*, 2013 Ohio 1521 (10th App. Dist)**

Circumstances indicative of a seizure include the threatening presence of several officers, display of a weapon by an officer, some physical touching of the person, use of language or tone of voice indicating compliance with officer's request might be compelled, approaching the person

in a non-public place, and blocking the person's path. Generally, when an officer approaches/questions a person seated in a parked vehicle, a consensual encounter occurs.

***United States v. Williams*, 2010 FED App. 0234P (6th Cir.)**

Upon being accused of breaking the law by a police officer, a reasonable person would not feel free to leave.

***State v. Jennings*, 2013 Ohio 2736 (10th App. Dist)**

Police officers may approach a citizen in a public place, engage him in conversation, request information, or even request permission to examine his identification or belongings, all without implicating the citizen's Fourth Amendment rights, so long as the person is free not to answer the police officer's questions or respond to his requests.

Whether an investigatory stop is reasonable depends upon the totality of the circumstances surrounding the incident. A court evaluating the validity of a Terry stop must consider the totality of the circumstances as viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold.

A defendant's movements, such as furtive gestures, can be considered in analyzing whether police officers had reasonable suspicion to conduct an investigative stop. A furtive gesture may be defined as a situation where police see a person in possession of a highly suspicious object or some object which is not identifiable but which because of other circumstances is reasonably suspected to be contraband and then observe that person make an apparent attempt to conceal that object from police view. Although furtive movements alone would not be sufficient to justify a search, they can be considered in making a totality of the circumstances determination. In addition, although some degree of nervousness during interactions with police officers is not uncommon, nervousness can be a factor to weigh in determining reasonable suspicion.

II. Reasonable Suspicion, Detentions/*Terry* Stops, Pat-Downs

Questions You Should Consider about *Terry* stops:

Q. Was there reasonable suspicion for the stop and is it articulated/documented? What did the suspect do—what conduct/behavior by the suspect supported reasonable suspicion? Was the stop based solely on things such as "high crime area" or time of day? Was there "unprovoked flight" in a "high crime area?" If the basis for the stop was a call or tip, was it from a known or unknown person? If based on an anonymous tip/unknown caller, what did you do to corroborate the tip *before* detaining, and is that documented in the report/U-10?

Q. If it was a good stop at the outset was the stop then conducted reasonably? Was the length/manner of the detention appropriate based on the suspected crime and/or conduct of the detainee? If the detainee was handcuffed and/or placed in cruiser -- why? Was the person released once reasonable suspicion was gone? If the person was patted down for weapons, what were the reasons? Was the pat-down done reasonably—meaning was it a pat-down v. search? If items were taken from the detainees pockets, what was basis for doing so? If the person flees

stop, or refuses to give identifying information, are they appropriately charged? Was detainee moved any meaningful distance during the detention? Was the force used to commence and/or continue the detention commensurate with the basis for the stop and the person's conduct? Did you ask the person any incriminating questions during the detention? If so did the questioning amount to custodial interrogation (probably not)?

***Wilkerson v. Warner*, 2013 FED App. 0938N (6th Cir.)**

Assessing whether an investigatory stop comported with the Fourth Amendment is a two-step process: **First**, the court must determine whether the officer had a reasonable basis for the stop by examining whether the officer had reasonable suspicion supported by specific and articulable facts**. Second**, if the stop was proper at its inception, the court must examine whether the intrusiveness of the stop was reasonably related to the situation by reviewing the reasonableness of the officer's actions in the context of the presenting circumstances. If the force went beyond that necessary for the Terry stop, the court interprets it as a signal that the confrontation had escalated into an arrest.

***State v. Forrest*, 2011 Ohio 6234 (10th App. Dist.)**

When the officer ordered defendant out of his car, and grabbed him by the arm to pull him from the car, the consensual encounter was converted into a seizure/detention, but that the officer had not yet developed reasonable suspicion so the drugs found as a result of the detention were suppressed. The court focused on the following facts in deciding there was not reasonable suspicion: the officer had seen no illegal conduct before or during the consensual contact, and the officer said he primarily approached the person, who was seated in a parked car, out of concern for the person, and not due to criminal conduct.

***United States v. Alexander*, 2013 FED App. 0566N (6th Cir.)**

Courts must give due weight to officers' factual inferences in deference to their specialized training, which allows them to make deductions that might well elude an untrained person. An investigative detention must be temporary and last no longer.

***United States v. Carter*, 2014 FED App. 0194N (6th Cir.)**

When an informant is known to an officer and has previously provided information, the informant's tip generally carries with it enough indicia of reliability to justify a Terry stop. A tip without "basis for reliability" cannot support reasonable suspicion.

Although an individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime, it is a "relevant characteristic" and may be considered among the relevant contextual considerations in a Terry analysis. In the Sixth Circuit, the court generally considers the high-crime context when the specific criminal history of the area corresponds with the same crime for which the citizen was stopped.

Generally, nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. However, a court must weigh the speed of the suspect's movements and the abruptness and other evasive characteristics of a suspect's departure upon noticing the police in determining reasonable suspicion. Evasive behavior in conjunction with a suspect's nervousness is required to justify reasonable suspicion.

In the reasonable suspicion context, the court has concluded that hurriedly walking away from an officer without making eye contact did not constitute evasive behavior.

There are innocent reasons to flee, but Terry permits officers to detain the individuals to resolve the ambiguity.

A lawful stop does not necessarily carry with it the authority to conduct a pat-down search. To justify the search, the prosecution must show that "a reasonably prudent man" would believe that a defendant's actions in the course of the stop warranted the belief that his safety or that of others was in danger. The Supreme Court has never authorized a protective search on anything less than reasonable suspicion that a suspect was armed and dangerous

***State v. Thomas*, 2011 Ohio 1191(10th App. Dist)**

Illinois v. Wardlow holds that flight is not necessarily indicative of wrongdoing, but it is certainly suggestive of such. The court said that while Thomas' presence in a high crime area was not, by itself, sufficient to support a *Terry* stop, that presence, when coupled with unprovoked flight from an officer, constitutes reasonable suspicion to justify a *Terry* stop.

***United States v. See*, 2009 FED App. 0264P (6th Cir.)**

High-crime area is a relevant factor when deciding reasonable suspicion, but you cannot stop a citizen solely because they are in a high crime area. The same goes for time of day. Blocking parked car with your cruiser so the car cannot leave causes the encounter to be *Terry* stop.

***Florida v J.L.*, 529 U.S. 266 (2000)**

An uncorroborated anonymous tip cannot be the basis for a *Terry* stop, even on a gun run. An anonymous caller reported to Miami-Dade police that a young, black man, standing at a particular bus stop and wearing a plaid shirt, had a gun. The officers responded to the bus stop and observed three black men. One was wearing a plaid shirt. The officers approached J.L. and frisked him. They seized a gun from his pocket. The Court found that there was no reasonable suspicion to detain and pat down J.L. Here, the informant did not give any predictive information about J.L.'s behavior. The caller only said that a black man in a plaid shirt at the bus stop had a gun. The officers did not observe any behavior on the part of J.L.

***State v. Jones*, 1999 Ohio App. LEXIS 5790 (1st App. Dist.)**

The typical *Terry* stop remains a very brief detention, without handcuffs, sufficient for the police to ask a few questions relating to identity and the suspicious circumstances. Placing a citizen in

handcuffs is a more drastic form of detention than merely being stopped and questioned. *Terry* cannot be read as a license for the police to stop and handcuff every person they may reasonably suspect of criminal activity.

***Houston v. Doe*, 174 F.3d 809 (6th Cir. 1999)**

During a *Terry* stop, when police officers reasonably fear that suspects are armed and dangerous, they may order the suspects out of a car and may draw their weapons when those steps are reasonably necessary for the protection of the officers.

Detention in a police cruiser does not automatically transform a *Terry* stop into an arrest. Nor does the use of handcuffs exceed the bounds of a *Terry* stop, so long as the circumstances warrant that precaution. However, a *Terry* stop may ripen into an arrest through the passage of time or the use of force. When this occurs, the continued detention of suspects must be based upon probable cause.

Although there is no bright line that distinguishes an investigative stop from a de facto arrest, the length and manner of an investigative stop should be reasonably related to the basis for the stop.

***Fisher v. Harden*, 398 F.3d 837 (6th Cir. 2005)**

In deciding whether a confrontation that began as a *Terry* stop has matured into an arrest, courts assess whether the use of force was reasonably related in scope to the situation at hand, or, likewise, whether the length and manner of the investigative stop was reasonably related to the basis for the initial intrusion. The investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.

***Kowolonek v. Moore*, 463 Fed. Appx. 531 (6th Cir. 2012)**

Most commonly, courts have found handcuffing and/or detaining a suspect in a police car permissible under *Terry* where there is a concern for officer safety because the suspect is thought to be armed. If a subject is unarmed, but nonetheless presents a risk to officer safety, handcuffing and detention in a cruiser may still be reasonable. Finally, a subject's attempt to flee or demonstrated flight risk may render handcuffing and detention in a cruiser objectively reasonable.

***Sutton v. Metro. Gov't of Nashville & Davidson County*, 700 F.3d 865 (2012)**

The removal of a suspect from the scene of the *Terry* stop generally marks the point at which the Fourth Amendment demands probable cause. The Supreme Court has recognized that, in some circumstances, police may transport a suspect a *short* distance in aid of a *Terry* stop.

***State v. Hall*, 2011 Ohio 5155 (8th App. Dist)**

A Terry pat-down is limited in scope to searching for weapons.

***State v. Michael*, 2013 Ohio 3889 (10th App. Dist)**

When an officer is conducting a lawful pat-down search for weapons and discovers an object on the suspect's person which the officer, through his or her sense of touch, reasonably believes could be a weapon, the officer may seize the object as long as the search stays within the bounds of *Terry*. A pat-down is not the only option available to an officer with reasonable suspicion that a suspect might be armed and dangerous. While a pat-down is generally the least intrusive and therefore preferred option, courts must allow for the possibility that, in some circumstances, a pat-down may not be the least intrusive, most effective or safest option for an officer to verify or dispel suspicions that the person is armed.

***State v. McClendon*, 2009 Ohio 6421 (Franklin County)**

The right to frisk is virtually automatic when individuals are suspected of committing a crime, like drug trafficking, for which they are likely to be armed. The same rationale applies to all drug traffickers, be they sellers or buyers and users. Indeed, Ohio courts have long recognized that persons who engage in illegal drug activities are often armed with a weapon

***Arizona v. Johnson*, 555 U.S. 323 (2009)**

Once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures. This rule applies to passengers as well as to drivers. To justify a pat-down of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

***State v. Lozada*, 92 Ohio St. 3d 74 (2001)**

Placing a driver in a patrol car during a routine traffic stop increases the intrusive nature of the detention. Failure to produce a driver's license during a traffic stop is a lawful reason for detaining a driver in a patrol car, and, consequently, officers may search such a detainee for weapons before placing the driver in the patrol car.

***State v. Baber*, 2012 Ohio 3467 (8th App. Dist.)**

During a routine stop, it is unreasonable for an officer to search the driver/pedestrian for weapons before placing him or her in a patrol car, if the sole reason for placing the driver in the patrol car during the investigation is for the convenience of the officer.

***State v. Richardson*, 1999 Ohio App. LEXIS 5802 (10th App. Dist)**

If a person stopped for a pedestrian violation doesn't have an I.D on them, but gives you their identifying information, and you do not have reasonable suspicion they are armed or dangerous, and they don't attempt to flee, you must attempt to verify the information to issue them the

citation without any further intrusion on their liberty meaning you cannot pat them down, or place them in the cruiser while you verify the information.

§ 2921.29. Failure to disclose one's personal information

(A) No person who is in a public place shall refuse to disclose the person's name, address, or date of birth, when requested by a law enforcement officer who reasonably suspects either of the following:

(1) The person is committing, has committed, or is about to commit a criminal offense.

III. Mental Health Seizures

§ 5122.10. Emergency hospitalization; temporary detention; limitations *(in part)*

Any,,, police officer,,,, may take a person into custody,,, if the,,, police officer,,, has reason to believe that the person is a mentally ill person subject to hospitalization by court order under division (B) of section 5122.01 of the Revised Code, and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination.

A written statement shall be given to such hospital,,, stating the circumstances under which such person was taken into custody and the reasons for,,, the belief. .

Every reasonable and appropriate effort shall be made to take persons into custody in the least conspicuous manner possible. A person taking the respondent into custody pursuant to this section shall explain to the respondent: the name, professional designation, and agency affiliation of the person taking the respondent into custody; that the custody-taking is not a criminal arrest; and that the person is being taken for examination by mental health professionals at a specified mental health facility identified by name.

***Ziegler v. Aukerman*, 512 F.3d 777 (6th Cir. 2008)**

Absent suspected criminal activity, a law enforcement official may not physically restrain an individual merely to assess his mental health. Rather, in the context of a mental health seizure, an officer must have probable cause to believe that the person seized poses a danger to himself or others.

IV. Use of Force to Detain/Arrest – Civil Liability

Some Questions You Should Consider About Use of Force:

Q. Do you understand the difference between passive and active resistance, or the difference between non-compliance and active resistance, and how this impacts your ability to use force? If force has been used against a handcuffed or otherwise restrained person, what is the justification for considering the person still to be a threat? If a compliant person complained their handcuffs were too tight, did you address this at the first reasonable opportunity? If a person has been

compliant, and has a serious injury/illness that would be made worse by cuffing in the back, did you explore an alternative means of restraint?

Q. Did the use of force end once the resistance/danger ended? How clearly have you articulated the basis for *all* of the force used—not just the initial force? If multiple uses of Taser, is each one explained, and did you give time for compliance between cycles?

Q. If non-deadly force is used against a person you believed to be mentally ill, or of diminished capacity, did you take that condition into consideration?

***Tenn. v. Garner*, 471 U.S. 1 (1985)**

The use of deadly force is reasonable only if the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others.

***Graham v. Connor,* 490 U.S. 386 (1989)**

Factors used to decide if force reasonably justified: 1) severity of the crime at issue, 2) immediate threat to officers or others, 3) whether suspect is actively resisting or evading arrest by flight.

***Chappell v. City of Cleveland*, 2009 FED App. 0382P (6th Cir.)**

You must have pc to believe person poses threat of serious physical harm to you or others to use deadly force. In the case of a knife wielding suspect, issues like proximity, barriers etc… will play a role in deciding if use of force was reasonable.

***Greathouse v. Couch*, 2011 FED App. 0512N (6th Cir.)**

When a person aims a weapon in a police officer's direction, that officer has an objectively reasonable basis for believing that the person poses a significant risk of serious injury or death. An officer need not wait for a suspect to open fire on him, much less wait for the suspect to actually hit him before the officer may fire back.

***Hermiz v. City of Southfield*, 484 Fed. Appx. 13 (6th Cir. 2012)**

Fourth Amendment law provides that an officer may shoot at a driver that appears to pose an immediate threat to the officer's safety or the safety of others—for example, a driver who objectively appears ready to drive into an officer or bystander with his car. But an officer may not continue to fire his weapon at a driver once the car moves away, leaving the officer and bystanders in a position of safety, unless the officer's prior interactions with the driver suggest that the driver will continue to endanger others with his car.

***Wells v. City of Dearborn Heights*, 2013 FED App. 0785N (6th Cir.)**

It is unreasonable to use significant force on a restrained subject even if some level of passive resistance is presented. This is especially true when the suspect is already handcuffed.

A police officer who fails to act to prevent the use of excessive force may still be held liable where (1) the officer observed or had reason to know that excessive force would be or was being used, and (2) the officer had both the opportunity and the means to prevent the harm from occurring. officers could be held liable under 42 U.S.C.S. § 1983 for standing by idly while other officers repeatedly beat and kicked a suspect and dragged him down an alley.

***Cabaniss v. City of Riverside*, 231 Fed. Appx. 407 (6th Cir 2007)**

As a general rule, the use of pepper spray is excessive force when the detainee "surrenders, is secured, and is not acting violently, and there is no threat to the officers or anyone else."

***Eldridge v. City of Warren*, 2013 FED App. 0715N (6th Cir.)**

When an officer employs a Taser on a suspect who is actively resisting, such action does not constitute excessive force. It is unreasonable to tase a non-resisting suspect.

In cases where the court has concluded that an officer's use of force was justifiable because it was in response to active resistance, some outward manifestation—either verbal or physical—on the part of the suspect had suggested volitional and conscious defiance

In the excessive force context, noncompliance alone does not indicate active resistance; there must be something more. It can be a verbal showing of hostility. It can also be a deliberate act of defiance using one's own body, or some other mechanism, such as a truck

In the excessive force context, the court has drawn a distinction between passive and active resistance, and failing to exit a vehicle is not active resistance.

***Brown v. Weber*, 2014 FED App. 0128N (6th Cir.)**

If a suspect actively resists arrest and refuses to be handcuffed, officers do not violate the Fourth Amendment by using a taser to subdue him. Tasing a suspect is not excessive force when the suspect refuses to move his hands from under his body so that officers could handcuff him.

Officer tased an arrestee who was seated on a restaurant counter, pulling his shirt over his head, and not responding to the officer, allegedly because he was a type 1 insulin-dependent diabetic experiencing very low blood sugar levels. Officer was properly denied summary judgment based on qualified immunity as to the arrestee's Fourth Amendment excessive force claim because the officer discharged the taser three times within sixteen seconds, and a genuine issue of material fact existed as to whether the arrestee actively resisted arrest by taking a "fighting stance," the arrestee allegedly posed little to no immediate threat to the safety of the officers or others, he was unarmed, was not making verbal threats, and he was not attempting to evade arrest by flight.

***Caie v. West Bloomfield Twp*., 485 Fed. Appx. 92 (6th Cir. 2012)**

As to the use of tasers specifically, the United States Court of Appeals for the Sixth Circuit has stated that absent some compelling justification-such as the potential escape of a dangerous

criminal or the threat of immediate harm-the use of a stun gun on a non-resistant person is unreasonable.

The appellate court determined that the detainee's excessive force claim failed because the single use of the taser in drive-stun mode did not violate his constitutional rights since, while he was not being arrested for a crime, his consumption of a large quantity of alcohol and drugs, his erratic behavior, and his self-proclaimed desire to provoke the officers into using deadly force could lead reasonable officers to conclude that he was a threat to officer safety. Although he insisted that he no longer posed a risk of harm or flight after being taken to the ground, he continued to be uncooperative by actively resisting attempts to secure his arms behind his back.

***Correa v. Simone*, 528 Fed. Appx. 531 (6th Cir. 2013)**

The court has found that defendants pose no immediate threat where they are not resisting and have their hands up in the air. The court has further found that a defendant pose no harm where the suspect previously reacted violently but was under control at the time of tasing.

The precedent in the circuit clearly holds that a police officer must encounter some level of resistance by the defendant to justify using a taser. The mere possession of a gun is not, in and of itself, resistance unless coupled with something more, such as a physical or verbal action. Using a taser on a potentially armed suspect who is complying with all officer commands and not resisting violated clearly established law as of May 2010.

***McAdam v. Warmuskerken*, 517 Fed. Appx. 437 (6th Cir. 2013)**

A single tasing violates a plaintiff's clearly established rights if he is neutralized and is not resisting an officer's efforts to restrain him. An officer may not tase an individual, who is handcuffed to a hospital bed and is verbally resisting medical treatment, but does not pose a safety risk to hospital staff or police officers.

***Hagans v. Franklin County Sheriff's Office*, 695 F.3d 505 (6th Cir. 2012)**

If a suspect actively resists arrest and refuses to be handcuffed, officers do not violate the Fourth Amendment by using a taser to subdue him. A suspect's active resistance marks the line between reasonable and unreasonable tasing in other circuits. The decedent smoked crack cocaine and began running around his yard screaming. When the decedent did not obey officers' commands to stop, they struggled with him on the ground. While the decedent was actively resisting, an officer applied his taser in drive-stun mode directly against the decedent several times. After the decedent was handcuffed and shackled, he stopped breathing. The decedent died three days later. The officer was entitled to qualified immunity as to the excessive force claim because the decedent was out of control and continued forcefully to resist arrest.

***Toner v. Vill. of Elkton*, 2013 FED App. 1005N (6th Cir.)**

Once a suspect is passively complying with an officer's commands, that suspect has a clearly established right to be free from force beyond what is necessary to carry out the arrest. Cases in

the Sixth Circuit clearly establish the right of people who pose no safety risk to the police to be free from gratuitous violence during arrest.

In determining whether there has been a violation of the Fourth Amendment, a court considers not the extent of the injury inflicted but whether an officer subjects a detainee to gratuitous violence. On the other hand, not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment.

The arrestee's excessive force claim failed because even assuming that the officer physically assisted the arrestee into the car without his consent, and that in doing so, the officer caused the arrestee's rotator cuff to tear, the officer's behavior was not objectively unreasonable.

***McCaig v. Raber*, 515 Fed. Appx. 551 (6th Cir. 2013)**

When a suspect refuses to follow officer orders, but otherwise poses no safety threat, use of significant force is unreasonable.

***Bozung v. Rawson*, 2011 FED App. 0705N (6th Cir.)**

It was reasonable for the officer to employ a "straight-arm bar takedown" to neutralize the plaintiff when the officer knew plaintiff had been drinking, knew the driver of the vehicle had fled the scene when the car was pulled over, and knew that there was a warrant for plaintiff's arrest. Officer also did not have an opportunity to search the vehicle or the plaintiff prior to the takedown. The court also found that Bozung had an ample amount of time to comply with the officers orders to place his hands behind his back.

***Meirthew v. Amore*, 417 Fed. Appx. 494 (6th Cir. 2011)**

Viewing the record in the light most favorable to plaintiff, defendant utilized the arm-bar takedown when plaintiff was unarmed, handcuffed, surrounded by police officers, physically restrained, and located in the secure confines of a police station. While she was non-compliant in refusing to spread her feet, a reasonable jury could find that plaintiff posed no danger, and the use of the arm-bar takedown was unreasonable under the circumstances. The underlying crimes allegedly committed by plaintiff were not severe, she did not pose an immediate threat, and she was not attempting to resist or evade arrest by flight.

***Jones v. City of Cincinnati*, 736 F.3d 688 (6th Cir. 2012)**

An officer should be entitled to qualified immunity if he made an objectively reasonable mistake as to the amount of force that was necessary under the circumstances with which he was faced.

To prevail on a claim for failure to provide medical care, a decedent's survivors must show that the officers were "deliberately indifferent" to the decedent's "sufficiently serious" medical need. Deliberate indifference requires that an officer (1) be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, (2) draw the inference, and (3) act

or fail to act in a manner demonstrating "reckless or callous indifference" toward the individual's rights.

Where a decedent died after struggling with six police officers, the Fourth Amendment excessive force claim based on baton strikes failed because the decedent initiated the physical struggle, at no time did he comply with the officers' orders, the strikes were directed to non-critical areas of his body, and an objectively reasonable officer could not have discerned whether he resisted in an attempt to breathe or in defiance of commands; The excessive force claim based on an officer's refusal to remove handcuffs failed because without notice that performing CPR on a handcuffed person was ineffective or less effective, the officer did not act objectively unreasonably in refusing to remove the handcuffs; The claim based on failure to provide medical care failed because the officers did not disregard the decedent's substantial risk of positional asphyxia.

***Martin v. City of Broadview Heights*, 2013 FED App. 0101P (6th Cir.)**

Creating asphyxiating conditions by applying substantial or significant pressure to restrain a suspect who presents a minimal safety risk amounts to excessive force. Using severe force, including a neck restraint, against an unarmed and minimally threatening individual before he is subdued violates the United States Constitution. The officers' failure to adhere to a departmental policy that explained the grave dangers of positional asphyxia verifies the unreasonableness of their actions

***Summerland v. County of Livingston*, 240 Fed. Appx. 70 (6th Cir 2007)**

The diminished capacity of an unarmed detainee must be taken into account when assessing the amount of force exerted. Where it is or should be apparent to the officers that the individual involved is emotionally disturbed, that is a factor that must be considered in determining . . . the reasonableness of the force employed.

***Landis v. Baker*, 297 Fed. Appx. 453 (6th Cir. 2008)**

Different tactics should be employed against an unarmed, emotionally distraught individual who is resisting arrest or creating disturbance than would be used against an armed and dangerous criminal who has recently committed a serious offense. When police are confronted by an unarmed, emotionally distraught individual who has committed no serious crime, as opposed to an armed and dangerous criminal, the governmental interest in using force is diminished, not strengthened, even when the suspect is irrational and inviting the use of force.

***O'Malley v. City of Flint*, 652 F.3d 662 (6th Cir. 2011)**

The Fourth Amendment prohibits unduly tight or excessively forceful handcuffing during the course of a seizure. However, not all allegations of tight handcuffing amount to excessive force. In order for a handcuffing claim to survive summary judgment, a plaintiff must offer sufficient evidence to create a genuine issue of material fact that: (1) he or she complained the handcuffs

were too tight; (2) the officer ignored those complaints; and (3) the plaintiff experienced some physical injury resulting from the handcuffing. And, even when a plaintiff makes this showing, a defendant officer may still be entitled to summary judgment on the basis of qualified immunity if it would not be clear to a reasonable officer that he was violating the plaintiff's rights. A constitutional requirement obligating officers to stop and investigate each and every utterance of discomfort and make a new judgment as to whether the handcuffs are "too tight" is neither reasonable nor clearly established.

***Lee v. City of Norwalk*, 529 Fed. Appx. 778 (6th Cir. 2013)**

The appellate court determined that the officers were entitled to qualified immunity on the handcuffing claim because even assuming that the arrestee complained that the handcuffs were too tight, that the officers ignored those complaints, and that an injury to her wrists resulted from the handcuffing, no reasonable officer would have known that ignoring her complaints during the short drive to the police station was unlawful.

***Dixon v. Donald*, 291 Fed. Appx. 759 (6th Cir. 2008)**

Absent exigent circumstances, an officer choosing to handcuff a peaceable arrestee in a manner likely to cause serious harm amounts to excessive force.

V. Detention/Arrest/PC Decisions—Civil Liability

***Srisavath v. City of Brentwood*, 243 Fed. Appx. 909 (2007)**

Plaintiff asserted that his Fourth Amendment rights were violated when the sergeant stopped his vehicle and arrested him in response to an anonymous tip. The appellate court found that by conducting a Terry stop without the necessary reasonable suspicion, the sergeant violated plaintiff's clearly established constitutional rights. The sergeant's conduct was objectively unreasonable because his basis for the Terry stop was an uncorroborated anonymous tip, and other circumstances he relied upon were insufficient to provide the reasonable suspicion required by the Fourth Amendment.

***Logsdon v. Hains*, 492 F.3d 334 (6th Cir. 2007)**

Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed. The inquiry depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest.

No overly-burdensome duty to investigate applies to officers faced with the prospect of a warrantless arrest. In initially formulating probable cause, they need not investigate independently every claim of innocence.

However, the initial probable cause determination must be founded on both the inculpatory and exculpatory evidence known to the arresting officer, and the officer cannot simply turn a blind eye toward potentially exculpatory evidence.

***Frodge v. City of Newport*, 501 Fed. Appx. 519 (6th Cir. 2012)**

In order for a plaintiff to prevail on a theory of wrongful arrest under 42 U.S.C.S. § 1983, he must prove that the police lacked probable cause. A plaintiff's Fourth Amendment rights are not violated if an officer does not have an arrest warrant so long as probable cause exists for the arresting officer's belief that a suspect has violated or is violating the law.

Once probable cause is established, an officer is under no duty to investigate further or to look for additional evidence which may exculpate the accused. Nevertheless, an officer cannot look only at the evidence of guilt while ignoring all exculpatory evidence. Rather, the officer must consider the totality of the circumstances, recognizing both the inculpatory and exculpatory evidence, before determining if he has probable cause to make an arrest. However, when a suspect asserts an affirmative defense, this does not automatically vitiate probable cause. The officer is not required to accept the explanation without question, but a police officer may not ignore information known to him which proves that the suspect is protected by an affirmative legal justification. On the other hand, even if the circumstances suggest that a suspect may have an affirmative defense, if a reasonable officer would not "conclusively know" that the suspect is protected by the defense then the officer is free to arrest the suspect provided there is probable cause to do so.

***Wysong v. City of Heath*, 377 Fed. Appx. 466 (6th Cir. 2010)**

A police officer cannot be liable for Fourth Amendment malicious prosecution when he did not make the decision to bring charges, as long as the information he submitted to the prosecutor is truthful.

***Hensley v. Gassman*, 693 F.3d 681 (6th Cir. 2012)**

Officer's presence during a repo solely to keep the peace, i.e., to prevent a violent confrontation between the debtor and the creditor, is alone insufficient to convert the repossession into state action. This holds true even where the officer interacts with the parties in the performance of official police functions. On the other hand, the likelihood that state action will be found increases when officers take a more active role in the repossession. An officer's presence at a repossession may constitute state action if accompanied by affirmative intervention, aid, intimidation, or other use of power which converts him from a neutral third party to, in effect, an assistant of the repossessing party.

The repo-man went to the debtors' residence to repossess a vehicle and called the sheriff's department to request police presence. A debtor and her son verbally and physically opposed the repossession. The debtor got into the vehicle, started it, and locked the doors. The deputies told the repo-man to pull the vehicle out of the driveway, broke a window, and pulled the debtor from the car.

VI. Arrest Warrants and Search Warrants

Questions You Should Ask About Arrest and Search Warrants:

Q. If you execute an arrest warrant, were you at address listed on the warrant, do you have reason to believe wanted person there at time, and did you knock/announce, wait reasonable amount of time before entering? Were incident to arrest searches proper and limited?

Q. If a search warrant is executed, is it for the correct address, is the knock and announce rule followed, and is any damage done during execution reasonable and necessary (same goes for arrest warrant execution)?

Q. If detentions are being made incident to the execution of an arrest/search warrant, are they reasonable, and are those detained in the subject home or within the immediate vicinity?

Q. Have you been truthful/accurate in arrest/search warrants?

Q. Should you have gotten a search warrant? Was what you did a search?

***United States v. Taylor*, 2012 FED App. 0012P (6th Cir.)**

Police may enter a home to execute an arrest warrant if they are at the address listed on the arrest warrant, and they have reason to believe the person listed on arrest warrant is in house.

***State v. Rodriguez*, 2013 Ohio 491 (8th App. Dist)**

An arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. However, in order to search for the subject of an arrest warrant in the home of a third party, a search warrant must be obtained, absent exigent circumstances or consent.

***Turk v. Comerford*, 488 Fed. Appx. 933 (2012)**

An officer may not conduct a warrantless search for a person named in an arrest warrant in a third-person's house without exigent circumstances or consent that is unequivocal, specific and intelligently given, uncontaminated by any duress or coercion.

***United States v. Shaw*, 707 F.3d 666 (6th Cir. 2013)**

Officers must take steps to reasonably ensure they are not entering the wrong home when they execute an arrest warrant. An officer may not falsely tell a homeowner that he has an arrest warrant for a house, then use that falsity as the basis for obtaining entry into the house.

***Florida v. Jardines* 133 S. Ct. 1409 (2013)**

A dog sniff at the front door of a house where the police suspect drugs are being grown is a search for purposes of the Fourth Amendment.

"A police officer not armed with a warrant may approach a home and knock, precisely because that is "no more than any private citizen might do.""

"While law enforcement officers need not "shield their eyes" when passing by the home "on public thoroughfares," an officer's leave to gather information is sharply circumscribed when he steps off those thoroughfares and enters the Fourth Amendment's protected areas."

***United States v. Jones*, 2012 U.S. LEXIS 1063**

The Government's installation of a global-positioning-system device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a "search."

***State v. Smith*, 124 Ohio St. 3d 163 (2009)**

Ohio Supreme Court held that the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement does not permit police to examine arrestee's cell phone.

***Messerschmidt v. Millender*, 132 S. Ct. 1235 (2012)**

The United States Supreme Court has rejected the contention that an officer is automatically entitled to qualified immunity for seeking a warrant unsupported by probable cause, simply because a magistrate had approved the application. But by holding that a magistrate's approval does not automatically render an officer's conduct reasonable, the Supreme Court did not suggest that approval by a magistrate or review by others is irrelevant to the objective reasonableness of the officers' determination that the warrant was valid.

***State v. Dibble*, 133 Ohio St. 3d 451 (2013)**

In determining whether a law-enforcement affiant intentionally or with a reckless disregard for the truth made a false statement in a search-warrant affidavit, "reckless disregard" means that the affiant had serious doubts of an allegation's truth. Omissions count as false statements if designed to mislead, or made in reckless disregard of whether they would mislead.

***Cline v. Myers*, 495 Fed. Appx. 578 (6th Cir 2012)**

An investigator may be held liable under 42 U.S.C.S. § 1983 for making material false statements either knowingly or in reckless disregard for the truth to establish probable cause for an arrest. To overcome an officer's entitlement to qualified immunity, however, a plaintiff must establish (1) a substantial showing that the defendant stated a deliberate falsehood or showed reckless disregard for the truth and (2) that the allegedly false or omitted information was material to the finding of probable cause..

***State v. Edwards*, 2013 Ohio 4342 (10th App. Dist)**

Even a single trash pull conducted just prior to the issuance of the warrant corroborating anonymous tips and background information involving drug activity establishes probable cause.

***United States v. Hodge*, 714 F.3d 380 (6th Cir. 2013)**

Statements from a source named in a warrant application are generally sufficient to establish probable cause without further corroboration because the legal consequences of lying to law enforcement officials tend to ensure reliability. When a witness has seen evidence in a specific location in the immediate past, and is willing to be named in the affidavit, probable cause is generally established.

A lawful search of fixed premises generally extends to the entire area in which the objects of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search, including the opening of closets, chests, drawers, and containers in which the contraband might be found. When the "objects to be found" are small, the legitimate scope of the search is broad.

***Bailey v. United States*, 133 S. Ct. 1031 (2013)**

Detentions incident to, or during, the execution of a search warrant are reasonable under the Fourth Amendment. However, once an individual has left the "immediate vicinity" of the premises to be searched, detentions must be justified by some other rationale.

Example #1: Officers are preparing to execute a search warrant on a home for a gun. A male leaves the house shortly before the warrant is to be executed. He is not the suspect, officers do not know his identity, and they have no reason to associate him with criminal activity. He gets in a car and drives off. He gets a mile from the house. The search warrant is being executed at that time. He cannot be stopped and detained incident to the search warrant because he is too far away – he is not within the "immediate vicinity" of the search warrant location. There also is not independent reasonable suspicion to detain him.

Example #2: Officers are preparing to execute a search warrant on a home for a gun. A male leaves the house shortly before the warrant is to be executed. He is not the suspect, and officers do not know his identity. He goes to get in a car, but before he can do so officers stop/detain him on the front sidewalk of the home. The search warrant is executed at that moment. This is a good stop and detention incident to the search warrant execution because he is within the "immediate vicinity" of the search warrant location.

Example # 3: Officers are preparing to execute a search warrant on a home for a gun. A male leaves the house shortly before the warrant is to be executed. The officers know he is the suspect associated with the residence and the gun, which is the subject of the search warrant. He gets in a car and drives off. He gets a mile from the house. The search warrant is being executed at that time. He cannot be stopped and detained incident to the search warrant because he is too far away – he is not within the immediate vicinity of the search warrant location. BUT, he can be detained a mile away because there is reasonable suspicion given he is the known suspect.

***L.A. County v. Rettele*, 550 U.S. 609 (2007)**

Officers executing a search warrant for contraband may detain the occupants of the premises while a proper search is conducted. In executing a search warrant officers may take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search.

Unreasonable actions include use of excessive force or restraints that cause unnecessary pain or are imposed for a prolonged and unnecessary period of time

***Marcilis v. Jones*, 494 Fed. Appx. 535 (6th Cir. 2012)**

The failure of police officers to knock and announce prior to forcibly entering a location to execute a search warrant, absent exigent circumstances, is a violation of the Fourth Amendment. It has long been clearly established in the Sixth Circuit that the Fourth Amendment forbids the unannounced, forcible entry of a dwelling in the absence of exigent circumstances.

***Thornton v. Fray*, 429 Fed. Appx. 504 (2011)**

It is clearly established law that the Fourth Amendment forbids the unannounced, forcible entry of a dwelling in the absence of exigent circumstances. Exigent circumstances may include situations where: (1) there would be a danger to the officer; (2) there would be danger of flight or destruction of evidence; (3) a victim or some other person is in peril; or (4) it would be a useless gesture such as when the person within already knew the officer's authority and purpose. While the police may take justified precautions when entering a potentially dangerous situation, officers must have more than a mere hunch or suspicion before an exigency can excuse the necessity for knocking and announcing their presence.

***Spangler v. Wenninger*, 388 Fed. Appx. 507 (6th Cir. 2010)**

The destruction of property is a meaningful interference with personal property and constitutes a seizure within the meaning of the Fourth Amendment.

***United States v. Whisnant*, 391 Fed. Appx. 426 (6th Cir. 2010)**

A warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. Officers executing search warrants on some occasions must damage property to perform their duty. The manner in which a warrant is executed is subject to judicial review as to its reasonableness.

VII. Consent to Search and Consent to Enter

Questions You Should Consider:

Q. Was the consent freely/voluntarily given? Did you do anything coercive to get consent? Did you lie/mislead to get consent to enter/search? Was the consent clear? Is consent is for entry or search of home? Did you ask for consent during a consensual encounter while holding any of the person's property? Was the person in custody at the time they gave consent, and if so, for how long? How many times was consent requested? Was the person aware they could refuse—especially if they were in custody? What is the educational/age level of the person?

Q. Were you within the scope of the consent? Was consent withdrawn? Was a non-consenter present? Does person who gave consent have joint authority/control? Written consent? Is it on CVS? If consent was obtained during some type of a stop, was the stop extended to get consent?

***State v. Clark*, 2012 Ohio 2058 (8th App. Dist)**

"Consent" that is the product of official intimidation or harassment is not consent at all. If you wish to conduct a "knock and talk" at a person's home, and maybe ask for consent to enter the home during the "knock and talk," this should be done with a minimal number of officers present, and without any use or show of force. You should not enter the doorway of the home or step across threshold before you are given consent.

***State v. Limoli*, 2012 Ohio 4502 (10th App. Dist.)**

When a person is lawfully detained by police and consents to a search, the state must show by clear and convincing evidence that the consent was freely and voluntarily given.

***State v. Spain*, 2011 Ohio 322 (10th App. Dist)**

When an officer prolongs a detention to conduct a search, and the search is not related to the original purpose of the stop, the prolonged detention constitutes an illegal seizure if the officer does not have reasonable suspicion of some illegal activity.

***United States v. Perry*, 703 F.3d 906 (2013)**

The court held that the fact that defendant was handcuffed and intoxicated when she gave consent did not render her consent involuntary. Intoxication does not necessarily make consent to a search involuntary.

***Fernandez v. California*, 2014 U.S. LEXIS 1636 (U.S. Supreme Court)**

The lawful occupant of a house or apartment has the right to invite the police to enter the dwelling and conduct a search. When one occupant of the residence objects to the search, his/her objection controls IF he/she is objecting at/on the premises. When the objecting party is absent from the premises, due to having been lawfully detained or arrested, the co-occupant's consent controls, and the police may conduct a warrantless search accordingly.

***Smith v. Stoneburner*, 716 F.3d 926 (2013)**

Officers do not need a warrant when residents invite them into their homes. Mere acquiescence, however, does not show consent; the resident must freely invite the officer into the house.

***State v. Booker*, 2012 Ohio 162 (8th App. Dist)**

A person can demonstrate consent to enter either expressly or impliedly, in ways such as opening a door and stepping back, or leading an officer through an open door and not expressing that he should not follow.

VIII. Exigent Circumstances and Home Entries

Questions You Should Consider:

Q. If you enter a home, what was basis: 1) Warrant; 2) Consent; 3) Exigent Circumstance?

Q. If exigent circumstance is basis for entry, what are facts supporting it? If hot-pursuit is justification, was pursuit it for an arrestable offense, did it start in a public place, and was the pursuit fresh? If destruction of evidence, did you have reason to believe destruction was imminent? If danger to others or officer was basis for home entry, what was reasonable basis for thinking someone inside was in danger or there was a danger emanating from the house?

Andrews v. Hickman County, **700 F.3d 845 (2012)**

To support a claim of exigent circumstances, an officer must be able to identify specific facts which, combined with reasonable inferences from those facts, give rise to the conclusion that the warrantless intrusion was appropriate. The line has been drawn at the door to a person's residence, and an officer may enter only with a warrant, consent, or qualifying exception to the warrant requirement under exigent circumstances.

State v. Johnson**, 187 Ohio App. 3d 322 (2nd App. Dist)**

A police officer drove by an apartment under suspicion and saw defendant standing outside. When defendant walked quickly into the apartment, the officer then approached the apartment and found that, while the screen door to the apartment was closed, the interior entry door was open. The officer opened the screen door and asked defendant whether the apartment was a boot joint. When defendant responded affirmatively, the officer entered the apartment. An officer's conduct in opening the door of an apartment and stepping into and standing in the doorway, in and of itself, and absent a warrant, constitutes an unlawful entry

Brigham City v. Stuart**, 547 U.S. 398 (2006)**

One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with injury. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.

United States v. Daws**, 711 F.3d 725 (2013)**

An immediate risk of injury to the police or others inside or outside a home justifies a warrantless entry. The gravity of the crime being investigated, the likelihood that the suspect is armed and the suspect's willingness to use a weapon all factor into the reasonableness equation. An exigency exists when officers can demonstrate suspect has a willingness to use a weapon.

Ryburn v. Huff**, 132 S. Ct. 987 (2012)**

The Fourth Amendment permits an officer to enter a residence if the officer has a "reasonable basis" for concluding that there is an imminent threat of violence.

***Stricker v. Twp. of Cambridge*, 710 F.3d 350 (2013)**

The court held that the combination of the 911 call soliciting help for a drug overdose, the police's independent knowledge and observations confirming the reported overdose, and the family's attempts to prohibit access despite their initial call for help made it objectively reasonable for the officers to believe that someone was overdosing on drugs and was in need of immediate medical evaluation to justify the warrantless entry of their home under the exigent circumstances exception to the Fourth Amendment. The search was objectively reasonable because the officers were justified in conducting the search to locate the family member and also the search through drawers to search for clues as to what the family member ingested to order to aid in his treatment.

***Johnson v. City of Memphis*, 617 F.3d 864 (2010)**

The combination of a 911 hang call (9-1-1 was called but the caller hung up before speaking with the operator), an unanswered return call, and an open door with no response from within the residence was sufficient to satisfy the exigency requirement.

***State v. Mackenzie*, 2011 Ohio 4966 (5th App. Dist)**

Exigent circumstances existed, permitting a deputy to enter the residence to check for possible burglary suspects or victims inside the residence. The exigent circumstances doctrine is applicable to entry at residences in close proximity to the location of the reporting residence.

***Kovacic v. Cuyahoga County Dep't of Children & Family Servs*., 724 F.3d 687 (2013)**

Exigent circumstances arise when an emergency situation demands immediate police action that excuses the need for a warrant, including the need to assist persons who are seriously injured or threatened with such injury. Preventing imminent or ongoing physical abuse within a home qualifies as an exigent circumstance.

***Nelms v. Wellington Way Apts*., LLC, 513 Fed. Appx. 541 (6TH Cir. 2013)**

Officers must have an *objectively reasonable basis* for believing that a person within the house is in need of immediate aid in order to allow a warrantless entry. The potential for injury to the officers or others and the need for swift action are the two dispositive factors to be consistently found in the cases involving the emergency aid exception to a warrantless entry into the home. A failure to respond to a knock on the door certainly can be a factor supporting a reasonable belief that someone inside needs immediate aid, but it cannot create that belief.

***State v. Lam, 2013 Ohio 505* (2nd App. Dist)**

A suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place. The hot pursuit exception has been extended to the search warrant requirement to misdemeanor offenses because there is no reason to differentiate

a defendant's misdemeanor offense and give him a free pass merely because he was not charged with a more serious crime.

***Smith v. Stoneburner*, 716 F.3d 926 (6th Cir. 2013)**

There is a customary presumption against warrantless entries, and a presumption against warrantless entries to investigate minor crimes or to arrest individuals for committing them

Under the hot pursuit exception, an officer may chase a suspect into a private home when the criminal has fled from a public place. If, say, a drug dealer runs into a house when police approach her after a controlled buy and after they identify themselves, the officers may follow her into the house to make their arrest. The "pursuit" begins when police start to arrest a suspect in a public place, the suspect flees and the officers give chase. What makes the pursuit "hot" is the emergency nature of the situation, requiring immediate police action

***State v. Enyart* 2010 Ohio 5623 (10th App. Dist)**

A warrantless entry to prevent the destruction of evidence is justified if the government demonstrates: (1) a reasonable belief that third parties are inside the dwelling; and (2) a reasonable belief that these third parties may soon become aware the police are on their trail, so that the destruction of evidence would be in order.

***State v. Alihassan*, 2012 Ohio 825 (10th App. Dist)**

Under the plain-view exception to the search warrant requirement, police may seize evidence in plain view during a lawful search if (1) the seizing officer is lawfully present at the place from which the evidence can be plainly viewed; (2) the seizing officer has a right of access to the object itself; and (3) the object's incriminating character is immediately apparent

***Mincey v. Arizona*, 437 U.S. 385 (1978)**

There is no "murder scene" exception to the Fourth Amendment's requirement of a warrant whereby law enforcement officers, who are legally on premises which are the scene of a homicide or of a serious personal injury with likelihood of death where there is reason to suspect foul play, may, within a reasonable period following the time when the officials first learn of the murder or potential murder, conduct a search for the limited purpose of determining the circumstances of death.

***Cochran v. Gilliam*, 656 F.3d 300 (6th Cir. 2011)**

In regards to the tenant's Fourth Amendment claim, while the deputies did not did not cart away all of the renter's possessions, the record made clear they were not simply innocent bystanders. Instead, they actively aided the landlords in removing the tenant's belongings from the house and into a pickup truck for the landlords to haul away.

An officer's mere presence at the scene to keep the peace while parties carry out their private repossession remedies does not render the repossession action that of the state. However, in cases where police officers take an active role in a seizure or eviction, they are no longer mere passive observers and courts have held that the officers are not entitled to qualified immunity. That is particularly true when there is neither a specific court order permitting the officers' conduct nor any exigent circumstance in which the government's interest would outweigh the individual's interest in his property.

IX. Searches Incident to Arrest/Protective Sweeps of Homes

Questions You Should Consider:

Q. If you conduct an in-home arrest, what may you search and/or sweep? If you look in areas beyond the lunge area of the arrestee, where are you looking and why? If you go into other parts of the home away from the arrest location, can you articulate reasonable suspicion for why you thought someone was there? If you search in small areas near the place of arrest, meaning places that could not hold a person, was it within the lunge area?

Q. If you arrest the person outside the home, such as on the porch, why did you then go in the home to do a sweep? If you justify a sweep of a home based on presence of a firearm, and the arrest took place outside the home, was there reason to believe someone was inside the house?

***Chimel v. Cal*., 395 U.S. 752 (1969)**

When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape… In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must be governed by a like rule… There is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control" - meaning the area from within which he might gain possession of a weapon or destructible evidence.

***Maryland v. Buie*, 494 U.S. 325 (1990)**

As an incident to an in-home arrest, police may, as a precautionary measure and without a search warrant, probable cause, or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. A "protective sweep" is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. In order to justify a protective sweep, there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. Protective sweeps are not warranted for every in-home arrest. Rather, "reasonable, individualized suspicion" is required.

***United States v. Taylor*, 2012 FED App. 0012P (6th Cir.)**

The police may conduct a protective sweep/search of a home pursuant to arresting someone in the home if there are "articulable facts" that would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. The protective sweep must last no longer than necessary to dispel the reasonable suspicion of danger and include only spaces where a person may be found. The police cannot justify a sweep simply by citing their standard procedure!

***State v. Boyd*, 2013 Ohio 1067 (2nd App. Dist.)**

The mere fact that a firearm may be located within a private home is not, by itself, sufficient to create an exigent or emergency circumstance. What must be present is a risk of danger from its use.

X. Miscellaneous Non-Consensual Warrantless Searches

***Maryland v. King*, 133 S. Ct. 1958 (2013)**

The Supreme Court determined that taking and analyzing a cheek swab of defendant's DNA was, like fingerprinting and photographing, a legitimate police booking procedure that was reasonable under the Fourth Amendment.

***State v. Emerson*, 2012 Ohio 5047**

A person has no reasonable expectation of privacy in his or her DNA profile extracted from a lawfully obtained DNA sample, and a defendant lacks standing to object to its use by the state in a subsequent criminal investigation.

***United States v. Booker*, 2013 FED App. 0251P (6th Cir.)**

In reaching the conclusion that forced surgery would be unconstitutional, the Supreme Court found that the following three factors weighed against its substantive reasonableness: (1) the extent to which the procedure may threaten the safety or health of the individual, (2) the extent of intrusion upon the individual's dignitary interests in personal privacy and bodily integrity, and (3) the community's interest in fairly and accurately determining guilt or innocence**.** When there was time to obtain a court order and the police declined to seek one, the suspect's privacy interests should be given particular solicitude.

XI. Vehicle Searches and Sweeps

Questions for You to Consider:

Q. If search based on consent did the person really freely and voluntarily consent? Did you extend the stop to get consent? Were you within the scope of the consent in how/what you searched? If consent withdrawn, did you stop search?

Q. If you searched incident to the arrest of an occupant/recent occupant of vehicle, what was the basis for doing so? Was there pc to believe there was evidence of that arrest in the vehicle at the time? Was the person under arrest at the time of the SILA?

Q. If you conducted a protective sweep of vehicle, why? What were facts giving you reasonable suspicion vehicle contained a weapon? Was someone possibly getting back into the vehicle after the sweep? Was the sweep limited to those places in the passenger compartment which could hold a weapon? If you swept outside of the passenger compartment, why? If looking in small containers during sweep, why?

Q. If you did pc based search of vehicle, what were facts giving rise to pc for the search? If based on plain-smell of burning marijuana, were you only looking in passenger compartment? If based on plain-view, were you outside vehicle at time of observation?

Q. If a police dog was brought to the traffic stop, was there a good traffic stop in the first place? Was the dog brought out to the scene of the stop during the time it took to process the traffic stop? If not, if the stop was extended to get the dog to the scene, was there reasonable suspicion of drug activity to justify the extension?

Q. Before, or while the dog is run around the car, were the occupants patted down? If so why? If the dog hit on the car, were the people from the car patted-down before the dog was run around? Were they searched after the dog hit on the car? If searched at that time, what was the justification? Was the dog handled appropriately during the stop in relation to the people?

***State v. Mays*, 2010 Ohio 3289 (Franklin County)**

The court found that defendant Mays did not consent to a search of his car where a deputy asked to search his car, Mays said there was nothing illegal in it, the deputy then asked "is that a yes?" and Mays said "if that's what you guys want to do."

***United States v. Cochrane*, 702 F.3d 334 (2012)**

During a valid traffic stop, police officers may ask extraneous questions unrelated to the purposes of the stop, so long as those inquiries do not measurably extend the duration of the stop.

The overarching consideration is the officer's diligence--i.e., his persevering or devoted application to accomplish the undertaking of ascertaining whether the suspected traffic violation occurred, and, if necessary, issuing a ticket

The safety of officers during traffic stops is a legitimate and weighty interest. Questions directed toward officer safety do not bespeak a lack of diligence (do you have a gun or weapon?). To the extent defendant objected to the fact the officers asked for his driver's license and registration

only after asking about the presence of contraband, there was no rule that officers must ask questions in a certain order.

Consent must be unequivocally and intelligently given, uncontaminated by duress or coercion.

The government bears the burden of proving, through clear and positive testimony that the consent to search was given voluntarily. Courts should consider several factors when evaluating whether consent was voluntary, including: the age, intelligence, and education of the suspect; whether the suspect understands the right to refuse consent; the length and nature of the detention; the use of coercive or punishing conduct by the police; and indications of more subtle forms of coercion that might flaw the suspect's judgment.

***United States v. McCall*, 2011 FED App. 0567N (6th Cir.)**

The scope of a warrantless search is limited by the scope of consent. The standard is objective reasonableness; the primary question is "what would the typical reasonable person have understood by the exchange between the officer and the suspect"; and the scope of the search is defined by the expressed object of the search. In this case, pulling up a loose center console when someone has consented to a search of their car, and the person knows you are looking for drugs, is not a "dismantling" of the car, and is within the scope of the consent. You can do the same type of search during a probable cause based non-consensual search as well.

***Arizona v. Gant*, 129 S. Ct. 1710 (2009)**

You can search a vehicle incident to the arrest of an occupant/recent occupant of the vehicle only when: **(1)** It is reasonable to believe that the arrestee might access the vehicle at the time of the search – based on this case you cannot justify a search for this reason if the arrestee has already been secured at the time of the search. In other words, this basis for a search incident to arrest is going to rarely exist since you almost always will have secured the person from the vehicle before contemplating a search of the vehicle incident to arrest; or **(2)** It is reasonable to believe that the vehicle contains evidence of the offense for which they were arrested.

***State v. Caulfield*, 2013 Ohio 3029 (2nd App. Dist)**

When a lawfully stopped vehicle contains passengers,,, the 4th Amendment permits law enforcement officers to detain those passengers for the duration of the lawful detention of the driver.

Much like a passenger can be detained by the police for the duration of a lawful stop of the driver, the driver may be detained for the period of time reasonably necessary for the officer to complete its investigation of a passenger.

An officer making a lawful custodial arrest may search the arrestee's person and the area within his immediate control-construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence

Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest

An officer, without probable cause to believe there is contraband in a vehicle, violates a passenger's rights when the officer orders the passenger to leave her purse in the vehicle, and then subsequently searches the purse along with the vehicle.

***United States v. Jones*, 2012 FED App. 0475N (6th Cir.)**

A properly affixed license plate that is only obscured by fog does not violate Ohio Rev. Code Ann. § 4503.21 if the officer can read the plate. Ohio Rev. Code Ann. § 4503.21 does not make a motorist responsible to light the area where a temporary tag is displayed so it will not be obstructed from view during the dark hours of the night and early morning.

Under Ohio law, once a police officer no longer has reasonable suspicion that a vehicle does not have the proper tags, the police can explain the reason for the initial stop to the driver but cannot ask for the driver's license or otherwise further detain the vehicle. Any evidence discovered as a result of further questioning, or search, will likely be suppressed as there is no further basis for the stop nor pc to search.

***State v. Cordell*, 2013-Ohio-3009 (10th App. Dist)**

The *Terry* warrantless search exception was expanded to protective searches of automobiles in *Long*. *Long* held that officers could undertake a protective sweep or search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, if the police officer possesses a reasonable belief, based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant, the officers to believe that the suspect is dangerous and the suspect may gain immediate control of weapons.

***United States v. Davis*, 2009 FED App. 0553N (6th Cir. 2009)**

A vehicle search incident to *detention* is permissible if the police officer possesses a reasonable belief that the suspect is dangerous and the suspect may gain immediate control of weapons.

***State v. Broughton*, 2012 Ohio 2526 (10th App. Dist.)**

Protective sweeps of the passenger compartment of an automobile are limited to those areas in which a weapon may be placed or hidden, and may be done if the police officer possesses a reasonable belief the suspect is dangerous and the suspect may gain immediate control of weapons. Although some degree of nervousness during interactions with the police is not uncommon, nervousness can be a factor to weigh in determining reasonable suspicion for a protective sweep. The possibility of access or control of weapons includes situations in which the suspect, while temporarily held in a cruiser or otherwise out of reach of the passenger

compartment of his own vehicle, will eventually be released to return to his vehicle, thereby regaining access to any hidden weapon.

***State v. Bazrawi*, 2013-Ohio-3015 (10th App. Dist)**

A defendant possesses no legitimate expectation of privacy shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either inquisitive passersby or diligent police officers.

Under the automobile exception, police may search a motor vehicle without a warrant if they have probable cause to believe that the vehicle contains contraband. In other words if a car is "readily mobile" and probable cause exists, the Fourth Amendment permits police to search the vehicle without more.

The viewing of drugs or other contraband in open view within a vehicle constitutes probable cause to search pursuant to the automobile exception.

If probable cause justifies the search of a vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

***State v Moore*, 90 Ohio St.3d 47 (2001)**

The smell of freshly burnt marijuana, detected by a person qualified to recognize the odor, is sufficient to establish probable cause to conduct a search of the vehicle and the driver. However in ***State v. Farris*** **109 Ohio St. 3d 519 (2006),** the court limited searches based on plain smell of freshly burnt marijuana to the passenger compartment. In ***State v. Gonzales*, 2009 Ohio 168 (Wood County)** it was held that if, during a valid stop, an officer qualified to recognize the smell of raw marijuana detects an overwhelming odor of raw marijuana, the officer is justified in believing that the vehicle contains a large amount of raw marijuana, and may search the trunk if no large amount of raw marijuana is seen in the passenger compartment.

***United States v. Hockenberry*, 2013 FED App. 0281P (6th Cir.)**

An impoundment decision will not be impermissible simply because alternatives to impoundment might exist. In order to be deemed valid, an inventory search may not be undertaken for purposes of investigation, and it must be conducted according to standard police procedures. Although inventory searches may not be undertaken for the purposes of investigation, the mere fact that an officer suspects that contraband may be found in a vehicle does not invalidate an otherwise proper inventory search.

***Missouri v. McNeely*, 133 S. Ct. 1552 (2013)**

In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so. In drunk-driving investigations, the natural

dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.

***United States v. Bell*, 555 F.3d 535 (6th Cir. 2009)**

The Fourth Amendment does not require reasonable suspicion to justify using a drug-detection dog as long as the traffic stop and detention are not improperly extended. In a traffic stop, an officer can lawfully detain the driver of a vehicle until after the officer has finished making record checks and issuing a citation, because this activity would be well within the bounds of the initial stop. A traffic stop is not constitutionally prolonged when permissible background checks have been diligently undertaken and not yet completed at the time a dog alerts.

***United States v. Samuels*, 2011 FED App. 0847N (6th Cir.)**

A seizure may not be unreasonably prolonged in order to enable the canine sniff to occur. In such cases, the use of the drug dog and any subsequent discovery of contraband would be the product of an unconstitutional seizure. Signs that the vehicle's interior had been altered, in addition to other factors, comprised sufficient reasonable suspicion to justify a brief detention while officers conducted a canine sniff.

***United States v. Morris*, 2013 FED App. 0731N (6th Cir.)**

Thirty to forty-five minutes is a reasonable amount of time to obtain a drug-sniffing dog where there is reasonable suspicion that the vehicle contains narcotics. Officer had reasonable suspicion to conduct further investigation because there was a large amount of cash visible in the vehicle, no proof of insurance, a criminal record of drug violations, and nervousness.

***Rainey v. Patton*, 534 Fed. Appx. 391 (6th Cir. 2013)**

The cases granting qualified immunity to the officer highlight the importance of facts establishing that a suspect has failed to surrender or has yet to be apprehended and has been given the opportunity to avoid an encounter with a dog before its employment. When such facts have not been present, use of a police canine has been deemed unreasonable.

It would be clear to a reasonable officer that employing a police dog against an unarmed suspect detained on the basis of a traffic offense, who was on the ground and not attempting to flee, would constitute excessive force.

XII. Detentions at Crime Scenes

The initial basis for detention of a witness to a violent felony should be O.R.C. 2921, which permits an officer to demand information (name, DOB, and address) from such a witness. If you reasonably suspect a person, who is in a public place, witnessed a violent felony, you can detain that person to get this information. Courts have also found it constitutionally reasonable to *briefly* detain a witness to a dangerous/violent crime (some misdemeanors) if the detention relates to a matter of public concern and is reasonable in length and manner.

***State v. Topps*, 2008 Ohio 4021 (2nd App. Dist)**

Under limited circumstances, a police officer may briefly detain a potential witness to a criminal act for investigative purposes, even though the officer has no reasonable basis for concluding that the potential witness is, or may have been, involved in the criminal activity that the police officer is investigating. Common sense dictates that in certain situations police should be permitted to momentarily detain possible witnesses to crime.

XIII. Photo Arrays and Identifications

***State v. Nickell*, 2013 Ohio 5144 (10th App. Dist)**

When assessing the reliability of a pretrial identification, the court must consider the totality of the circumstances, including the following factors: the opportunity of the witness to view the criminal at the time of the crime, the witness's degree of attention, the accuracy of his or her prior description of the criminal, the level of certainty demonstrated at the identification, and the time between the crime and the identification. In this case, even though the witness indicated he was only 65-70% sure the man in the photo array was the suspect, the array was admissible and supported a conviction partially because the witness indicated he couldn't ever be 100% sure of anything.

***State v. Pressley*, 2012 Ohio 4083 (2nd App. Dist)**

The on-scene identification of defendant was not unduly suggestive because the victim was simply asked to look at the three males to see if she recognized any of them. The victim had clearly seen the two men that broke into her house and was able to distinguish between the men she could recognize from the burglary and the one she could not identify. Show-up identifications at or near the scene of a crime, that occur shortly after the crime, are not only permissible, but useful, since they can lead to an identification or non-identification while the characteristics of the perpetrator are still fresh in the witness's memory. However, the show-up must not be unduly suggestive.

XIV. Miranda and Right to Counsel

Questions You Should Consider:

Q. Should patrol officers interrogate suspect/arrestee? Is a detective going to interrogate? Is the person in custody, and if so, are they being interrogated? Has a *Terry* stop become custody akin to arrest thus requiring *Miranda* warnings before questioning?

Q. How should you view juveniles in relation to custody and Miranda warnings?

***Montejo v. Louisiana*, 129 S. Ct. 2079 (2009)**

Defendants may be interviewed *after* arraignment, while in jail, on the charge for which they were arraigned if they have not invoked their right to counsel.

***Maryland v. Shatzer*, 175 L. Ed. 2d 1045 (2010)**

Defendants who are serving their sentence in prison may be interviewed *after* they have invoked their right to counsel *after* a sufficient break in custody. Return to the general prison population for 14 days is a sufficient break in *Miranda* custody allowing for a second interview.

***Bobby v. Dixon*, 132 S. Ct. 26 (2011)**

The inmate and an accomplice murdered a victim in order to steal his car. According to the Sixth Circuit, the Miranda decision itself clearly established that police could not speak to the inmate on November 9, because on November 4 he had refused to speak to police without his lawyer. That was plainly wrong. It was undisputed that the inmate was not in custody during his chance encounter with police on November 4; therefore, Miranda did not apply. Second, the Sixth Circuit held that police violated the Fifth Amendment by urging the inmate to "cut a deal" before his accomplice did so. Because no holding of the Court suggested, much less clearly established, that police may not urge a suspect to confess before another suspect does so, the Sixth Circuit had no authority to issue the writ on this ground. The circumstances surrounding the inmate's interrogations demonstrated that his statements were voluntary. There was simply "no nexus" between the inmate's unwarned admission to forgery and his later, warned confession to murder.

***Howes v. Fields*, 132 S. Ct. 1181 (2012)**

The United States Supreme Court has noted that the bare fact of custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official. The United States Supreme Court has expressly declined to adopt a bright-line rule for determining the applicability of Miranda in prisons. The answer to this question, the Supreme Court noted, would depend upon whether incarceration exerts the coercive pressure that Miranda was designed to guard against -- the danger of coercion that results from the interaction of custody and official interrogation.

***Berghuis v. Thompkins*, 2010 U.S. LEXIS 4379**

A suspect who receives and understands their *Miranda* warnings and who does not invoke their *Miranda* rights waives their right to remain silent by making voluntary statements to the police.

***J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)**

If an officer knows at the time the actual age of the youth the police are about to question, or a suspect's young age is apparent, the officer must take that into account in deciding for or against giving a *Miranda* rights warning.

***State v. Tibbs*, 2011 Ohio 6716 (1st App. Dist)**

In determining whether a juvenile's statements have been voluntarily made, a court must consider the totality of the circumstances, including the age, mentality and prior criminal

experience of the accused; the length, intensity, and frequency of interrogation; and the existence of physical deprivation or inducement. A 15 year old made an incriminating statement in this case after being *Mirandized* and the statements were deemed admissible.

***In re M.W.*, 2012 Ohio 4538 (Ohio Supreme Court)**

R.C. 2151.352 provides that a child "is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152." Because the term "proceedings," as used in this statute, means court proceedings, a juvenile does not have a statutory right to counsel at an interrogation conducted prior to the filing of a complaint or prior to appearing in juvenile court.

***Salinas v. Texas*, 133 S. Ct. 2174 (2013)**

Petitioner, without being placed in custody or receiving Miranda warnings, voluntarily answered some of the police officer's questions about a murder, but fell silent when asked whether ballistics testing would have matched his shotgun to shell casings found at the scene of the crime. Petitioner claimed that the prosecution's use of his silence at trial violated the Fifth Amendment.

The general rule is a witness must assert the privilege against self-incrimination to subsequently benefit from it. A defendant normally does not invoke the privilege by remaining silent. A defendant's failure at any time to assert the constitutional privilege against self-incrimination leaves him in no position to complain that he was compelled to give testimony against himself.

***United States v. Woods*, 711 F.3d 737 (6th Cir. 2013)**

The unexpected and unresponsive reply cannot retroactively turn a non-interrogation inquiry into an interrogation. The police surely cannot be held accountable for the unforeseeable results of their words or actions. Volunteered statements of any kind are not barred by the Fifth Amendment.

***United States v. Hodge*, 714 F.3d 380 (2013)**

Overriding considerations of public safety could justify a failure to provide *Miranda* warnings before initiating custodial interrogation. .

Quarles requires an officer to have reason to believe (1) that the defendant might have (or recently have had) a weapon, and (2) that someone other than police might gain access to that weapon and inflict harm with it.

Williams reaches the sensible conclusion that in a case involving a gun, the police must be aware of a third party who can access the gun and harm others. .

But in a case involving a bomb, the presence of third parties who can access the bomb is usually not a compelling consideration.

XV. Domestic Violence/Family Law

DOMESTIC VIOLENCE 2919.25

-"No person shall knowingly cause or attempt to cause physical harm to a family or household member" (A) = M1

-"No person shall recklessly cause serious physical harm to a family or household member" (B) = M1

-"No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member" (C) = M4

ASSAULT 2903.13

-"No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn" (A) = M1

-"No person shall recklessly cause serious physical harm to another or to another's unborn" (B) = M1

Definitions:

Family or Household Member

1. IS or HAS resided with Def. AND is a
2. Spouse of Def OR a former spouse
3. Person living as a spouse
    a. Common law spouse
    b. Cohabitating with Def or has cohabitated with Def within the last 5 years prior to the incident
4. Parent or Foster parent of Def
5. Child of Def
6. Blood relative to Def
7. Relative by marriage to Def
8. Parent of a spouse/former spouse/person living as spouse of Def
9. Child of a spouse/former spouse/personal living as spouse of Def
10. Has a child in common with Def (natural parent of)
    a. NOTE – no residency requirement!
    b. Therefore, two people who have never lived together but have a child together ARE considered family/household members under Ohio law

CONFUSION – Lots of officers are confused about the time period with which people have to have lived together or how recently when they're trying to determine if two parties have a DV (Family/household) relationship. Questions to ask that will help:

1. Are the two parties married or were they married at one time?

a. Yes
    i. Are they living together now or have ever lived together (even for a day)?
        1. Yes = DV rel'p
        2. No = No DV rel'p
b. No
    i. Are they living together now or have they lived together within the last 5 years?
    ii. Yes
        1. Are they in a romantic rel'p together?
            a. Yes = DV rel'p
            b. No = no DV rel'p (ex. Roommates)

2. Are the parties parents/children/blood relations/marriage relations to each other?
    a. Yes
        i. Are they living together or have they ever lived together?
            1. Yes = DV rel'p.
            2. No = no DV rel'p
3. Do the parties have a child in common? Yes = DV rel'p.

Remember – In Ohio, same sex partners who are living together in a romantic rel'p are legally considered family/household members. The relevant factors to consider are whether the two parties are sharing family or financial responsibility and whether there is consortium (i.e. sex) between them.

ORC definition – Family/Household Member:

(A) a person who (is residing with the defendant) (has resided with the defendant) AND who is a (spouse of) (person living as a spouse of) (former spouse of) (parent of) (child of) (person related by consanguinity to) (person related by affinity to) (parent of a spouse of) (child of a spouse of) (parent of a person living as a spouse of) (child of a person living as a spouse of)(parent of a former spouse of) (child of a former spouse of) (person related by consanguinity to a spouse of) (person related by affinity to a spouse of) (person related by consanguinity to a person living as a spouse of) (person related by affinity to a person living as a spouse of) (person related by consanguinity to a former spouse of) (person related by affinity to a former spouse of) the defendant.

OR

(B) the natural parent of a child of whom the defendant is the (other natural parent) (putative other natural parent).

ORC Definitions:
1. "Person living as a spouse" means a person who ([is living] [has lived] with the defendant in a common law marital relationship) (is cohabiting with the defendant) (has cohabited with the defendant within five years before the commission of the act in question).

2. "Cohabit" means the sharing of family or financial responsibilities and consortium

3. "Family or financial responsibilities" may include such things as providing shelter, food, clothing, utilities, and (commingling) (combining) assets.

4. "Consortium" may include such things as mutual respect, fidelity, affection, society, cooperation, solace, aid to each other, friendship and (conjugal) (sexual) relations.

5. "Consanguinity" means a blood relationship (as opposed to a relationship by marriage).

6. "Affinity" means a relationship by marriage (as opposed to a relationship by blood).

7. "Threat of force" means any violence, compulsion or constraint threatened to be used by any means upon or against a person.

8. "Imminent" means about to happen.

9. "Reside" means to live in a place on an ongoing basis.

10. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

11. "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. Does NOT include wear and tear occasioned by normal use.

12. "Serious physical harm to persons" means any of the following:
(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
(b) Any physical harm that carries a substantial risk of death;
(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity
(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

13. "Serious physical harm to property" means any physical harm to property that does either of the following:
(a) Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;
(b) Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.

14. "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

15. "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist

DV ENHANCEMENTS:

Crimes that qualify for felony enhancement:

1. DV (either M1 or M4)
2. Endangering Children (M1)
3. Criminal Mischief (either M1 or M3)
4. Criminal Damaging (M2)
5. Neg. Assault (M3)
6. Agg. Trespass (M1)
7. Burglary (any degree)

NOTE: Can only be used for enhancement if there was a conviction for any of the above offenses AND the victim of the offense was a family or household member AT THE TIME OF THE VIOLATION

If 1 prior conviction AND victim is a F/H member at the time of the violation:
-a violation of 2919.25(A) or (B) = F4; AND if Def knew victim was pregnant at the time = mandatory prison time if convicted
-a violation of 2919.25(C) = M2
If 2 prior convictions AND victim is a F/H member at the time of the violation:
-a violation of 2919.25(A) or (B) = F3; AND if Def knew victim was pregnant at the time = mandatory prison time
-a violation of 2919.25(C) = M1

Important things to remember:

1. When officers bring a DV packet to the Municipal Court Clerk's office (even if simply dropping off the packet for another officer), you must take the complaints out of the packet and make sure that case numbers get assigned by the clerk's office before leaving. Otherwise, the warrants never become active because there is no case number in the system and the clerk's office will not open the packets to get the complaints.

2. From time to time the DV and Assault complaints will be notarized by a police officer but the officer swearing to the complaints never signed them. These are making it up to the DV Unit with no case numbers and no signature by the officer. The DVU then has to track down the officer(s) and get this taken care of. The biggest issue with this is the same as above, where we have a suspect that should have active warrants for his arrest running around for several days following a DV incident without the warrant having been issued.

3. BACK-UP CHARGES (Part 1): Whenever officers are filing a DV M1 charge, they should always be filing the back-up Assault charge. On the off-chance that there is a misunderstanding about the relationship between the parties, we need the Assault charge to prove the case. ALSO, whenever officers are filing a DV M4 (threat) charge, they should always be filing either the M4 Menacing or M1 Agg Men too. Same rationale, in case there is a problem down the line with proving the relationship between the parties.

4. BACK-UP CHARGES (Part 2): Unfortunately, one of the realities of DV is that sometimes the victims are unwilling to come to court after the charges are filed or they are unwilling to testify against their abuser should the case go to trial. This is where back-up charges can be very helpful. If the defendant commits others crimes at the time of the DV offense, and the officers determine that PC exists for additional charges, we would encourage officers to file those charges. Typical examples include: Resisting Arrest, Obstructing Official Business, Disorderly Conduct, mm Drug Abuse, Falsification, etc.

Multiple times we have seen the defendant lie to officers about their name/ID info, or run/hide from officers, flail around acting disorderly, or resist arrest when the officers are trying to execute the DV warrant, etc. and the only charges filed are DV and Assault against the victim. Then when the case gets to court, if the prosecutors can't prove the charges without the victim, the case MUST be dismissed. If there are other charges, it gives the prosecutor more ability to make the case or help them get a plea. You may think to yourself, "but I already charged him with two M1s, why should I bother with an M2 or M4?" Because the prosecutor might only be able to prove the OOB/RA/DC if the victim does not come to court, based on the officers' testimony alone. And if the defendant ends up pleading and being placed on probation, they can be ordered to stay away from the victim or engage in and complete a counseling program.

AGGRAVATED MENACING 2903.21 AND MENACING 2903.22

Agg Men:

"No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family." = M1 (can be enhanced to felony)

Menacing:

"No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family." = M4

Threats against officers and their families:

- Still have to meet the statutory elements
- If the officer does NOT believe that the person will carry out the threats, then the officer should not file the charge
- If the officer DOES believe that the person will carry out the threats, then which crime to charge hinges on the specific language used by the offender

REMEMBER: The threats must be BELIEVED in order to satisfy the statutory elements. If the victim reports that "he threated to kill me but I didn't think he really would, he was just mad…" then the elements have NOT been met. THIS IS ALSO TRUE FOR ANY CHARGE OF DV M4 (THREATS). Also, threats to PROPERTY also qualify, not just threats to persons

Weapon Use:

- Gun: If the offender threatens the victim with a gun, there is NO requirement that the gun be operable or loaded in order to satisfy the elements for Agg Men.
- Knife: If the offender threatens the victim with a knife, there is NO requirement that the knife actually be used to satisfy the elements for Agg Men
- Threats without weapons: CAN still satisfy elements for Agg Men/Men if the offender knowingly causes the victim to believe the offender will carry out his threat, even if he does not have the ability to actually do so. So if I tell someone "I am going to shoot you in the head," and they believe me, I can be charged with Aggravated Menacing even if I don't have a gun on my person.
- Back-up charges: If you charge a defendant with Domestic Violence (M4) for threats such as "I am going to kill you," or "I will shoot you," and/or "I will stab you," you should also file an Aggravated Menacing charge with the DV charge. Lately we have seen officers either not charge anything besides the DV, or file just a Menacing charge. Threats to kill, shoot, cut in half, or other smaller pieces, are threats to cause serious physical harm thus they merit the filing of an Aggravated Menacing charge along with the DV. Some officers seem confused by this because the DV threat section (2919.25(C)) is an M-4 while Aggravated Menacing is an M-1. This is not a problem and is not a bar to filing both charges.

VIOLATING A PROTECTION ORDER (VPO) 2919.27

(A) "No person shall recklessly violate the terms of any of the following:
(1) A protection order issued or consent agreement approved pursuant to ORC 2919.26 or 3113.31
(2) A protection order issued pursuant to ORC 2151.34, 2903.213 or 2903.214
(3) A protection order issued by a court of another state
=M1
VPO Enhancement: If Def has 2 or more prior convictions for VPO 2919.27, the next VPO charge can be enhanced to an F5

Different kinds of protection orders:

Municipal court may issue a Domestic Violence Temporary Protection Order (DVTPO) or a Criminal Protection Order (CRPO) depending on the type of charge and the relationship of the victim to the defendant. Civil (Domestic) Court issues Civil Protection Orders (CPO) victim is a family or household member of the defendant. If victim is being stalked, Common Pleas Court may issue a Civil Stalking or Sexually Orientated Offense Protection Order (SSOOPO). There is also an Ex-Parte CPO which is can be granted before a full hearing can be held to determine whether a CPO will be issued. CPO's are typically valid for 5 years.

DVTPO's issued in arraignment court have same effect as CPOs, etc. while the case is pending (they are sometimes granted by consent, sometimes contested, which involves a hearing in arraignment court)

-Prevents any contact between defendant and PW while case is pending. Once case is resolved, DVTPO goes away.
-IS enforceable by arrest

*__Protection Orders ONLY apply to the defendant NOT to the protected party__: one common refrain heard by officers/lawyers/judges is that the protected party "can't violate the order either" – THIS IS NOT LEGALLY CORRECT. The person against whom the protection order is valid (defendant) is the ONLY one who is subject to that order. He is not allowed to violate the order even with the permission of the protected party.

Example: Jane files for a CPO against her husband Jon. Among others, the conditions include that Jon is prohibited from having any contact with Jane and that he must stay at least 500 feet from her residence. The order is granted and Jon is served with his copy of the CPO and the terms and conditions are explained to him. The CPO is now considered "good" or "valid" and he has been served. The next week, Jane calls Jon with a question about their kids. Jon answers the phone and agrees to come over to Jane's house and deal with the situation. While Jon is at Jane's house that night, they get into a fight and Jon punches Jane in the mouth. Officers are called to the scene and make contact with Jane and Jon.

1. Based on these facts, is there PC to believe that Jon has violated the protection order?
2. Based on these facts, is there PC to believe that Jane has violated the protection order?
3. What crimes, if any, would you charge Jon with and why?

State v. Smith (2013 Ohio 1698): **This case has changed the law!**

Holding: The court held that, in order to sustain a conviction for violating a protection order the state must establish, beyond a reasonable doubt, that it served the defendant with a copy of the protection order before the alleged violation/offense

Facts:
Shasta Pickens and Robert L. Smith Jr., began dating in 2009. The two did not live together. Pickens lived at 879 Camden Avenue, Columbus, Ohio, and Smith lived with his mother. Smith was not on the lease at the Camden address and did not have a key.

Pickens described her relationship with Smith as "rocky" and marked with "altercations." She terminated the relationship in early 2010. On April 12, 2010, Pickens filed a petition in the Franklin County Court of Common Pleas for an ex parte SSOOPO against Smith.

The court granted the petition that day, set a mandatory full hearing date, and issued an ex parte SSOOPO which ordered Smith "not [to] be present within 500 feet" of Pickens "wherever [she] may be found, or any place [Smith] knows or should know [Pickens is] likely to be."

On the day the court issued the SSOOPO, the Franklin County Clerk of Courts issued an order to serve Smith. The clerk's order required the Franklin County Sheriff to serve a certified copy

of the SSOOPO and to make a return of service reporting either personal service on Smith or a failure of service of the order. Pickens testified that after obtaining the SSOOPO, she showed Smith a copy of it and told him that he was not allowed to be around her. She believed that that event had occurred on April 16, 2010. At that point, the sheriff had not yet served Smith with the order.

On April 17, 2010, Pickens heard a bang in her basement. She opened the basement door and saw Smith coming up the stairs. Pickens testified that Smith grabbed her from behind around her neck and put her in a headlock. He attempted to choke her, and the two began to tussle. The altercation ended when Pickens's 14-year-old son and his friend entered the house. However, Smith did not leave. Pickens called 9-1-1, and Columbus police officers responded. Smith attempted to flee, but the officers apprehended and arrested him.

The return-of-service portion of the clerk of court's order to serve reflects that a deputy sheriff personally served Smith with the SSOOPO on the same day as the altercation. However, **service was not effected until after the incident occurred**.

On April 27, 2010, Smith was indicted for aggravated burglary, a misdemeanor charge of violating a protection order or consent agreement (R.C. 2919.27(A)(2)), domestic violence, and resisting arrest. The matter was tried to a jury, which found Smith guilty of aggravated burglary, violating a protection order, and resisting arrest. The domestic-violence charge was dismissed upon Smith's Criminal Rule 29 motion.

On appeal, Smith argued that without proof of service, there was insufficient evidence to establish that at the time of the altercation he knew that there was a protection order in place. Thus, the state failed to prove that he had "recklessly" violated the order as recklessness requires perverse disregard of a known risk. The court agreed and overturned Smith's conviction on the VPO charge.

As a result, the court held that the law "mandates that the court bring about a transfer of possession of a copy of the SSOOPO to the respondent. **The statute requires more than just the court's issuing the SSOOPO and ordering its delivery to the respondent. It requires that the order actually be delivered**."

Officer's Questions:

We have recently been asked two questions about probable cause to charge for a violation of a protection order: 1) Is a written statement by the petitioner, which alleges conduct which would be a violation of the protection order, sufficient by itself to file a charge; and 2) Does an officer always have to file a violation of protection order charge if the petitioner executes a statement indicating a violation has occurred.

1) First, yes you may file, and the vast majority of the time you should file, charges for violating a protection order if the petitioner executes a written statement indicating a violation of the order

has taken place. Bear in mind that you may continue to further investigate even though a statement has been executed by the petitioner. You may strengthen the basis for the charge or find there is no basis for the charge. You should also file charges if you have other knowledge/facts of a violation of the order even if a statement has not been executed. (See **ORC § 2935.03** for further explanation of the basis for filing violation of protection order charges) Keep in mind there is a preferred policy of arrest for violations of a protection order just as with Domestic Violence.

2) Second, you do not have to file a charge for violating the protection order when a statement is executed by the petitioner if you have a specific factual basis for believing the written statement is untrue. In other words, if you have a factual basis for doubting a violation of the order took place as alleged in the statement by the petitioner you do not have to file charges even though the statement has been executed by the petitioner. For example, if the petitioner executes a written statement indicating a violation, but an independent witness indicates the story is untrue as to the violation, this would be a legitimate reason not to file despite the written statement. Probable cause must exist for the filing of any criminal charge and evidence that an incident did not occur, or occurred differently than alleged, would certainly undercut probable cause.

Stay Away Orders
-Conditions of bond or probation
-Violations of a Stay Away are NOT enforceable by arrest

Example 1: Joe Smith is arrested for M1 DV and M1 Assault against his wife, Sally Smith. Joe goes through 4D arraignment court the next morning and the judge sets a bond. As a condition of the bond, Joe is ordered not to have any contact with Sally while the case is pending. The judge tells Joe to "stay away" from Sally until the case is resolved. Joe posts the bond and is let out of jail. He calls Sally after he's released and asks her to come pick him up.
1. Has there been a violation? If so, what was the violation?
2. What can Sally do with this information? Who can she contact?
3. What is the remedy for what Joe has done?

Example 2: Joe Smith pleads guilty to M1 DV where the victim is his wife, Sally Smith. He is sentenced to 180 days in FCCC, which is suspended for 1 year of probation. As a condition of probation he is ordered to "stay away" from Sally. A week later, Joe calls Sally on her cell phone and asks if she still loves him. Sally calls the police.
1. Has there been a violation? If so, what was that violation?
2. What can the officers do legally about this situation?

3. What is Sally's recourse? That is, what can Sally do now with this information? Who can she call, etc.?

Restraining Orders
-Typically part of divorce or separation agreements
-Prevents parties from disposing of assets, selling or removing items from family home, etc.
-NOT enforceable by arrest

JURISDICTION:
-Agg Men/Men/DV M4: must be able to prove that threats were made OR received in the City of Columbus for us to have jurisdiction
-Telecommunications Harassment: must be able to prove that communication was made OR received in the City of Columbus
-VPO: must be able to prove that violation occurred within City of Columbus
-Keep in mind, for charges under 2919.25(C), that there has to be an "imminent" threat, so if the victim is aware that the person making the threat is out-of-state at the time the threat is made, DV M4 would be an inappropriate charge.

***City of East Cleveland v. Perkins*, 2009 Ohio 2131**

Domestic violence under the threat of force provision of R.C.2919.25(C) provides that no person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member. This provision of the domestic violence statute contains the element of "imminence…"

***State v. Diroll*, 2007 Ohio 6930**

For purposes of a prosecution for domestic violence, under R.C. 2919.25(C), "imminent" means "threatening to occur immediately." A definition of "imminent" as "about to occur at any moment" has also been applied. The evidence was insufficient because it did not show the victim thought defendant's threat was imminent, as, after it was made by phone, the victim called defendant, told him to get his property from her home, put the property on her porch, locked the doors, left the house, and the threat was conditional.

Interference with Custody 2919.13 (M1)

-(A) No person, knowing the person is without privilege to do so or being reckless in that regard, shall entice, take, keep or harbor a person identified in division (A)(1),(2) or (3) of this section from the parent, guardian or custodian of the person defined in division (A)(1), (2) or (3) of this section:

(1) a child under the age of eighteen, or a mentally or physically handicapped child under the age of twenty-one

(2) a person committed by law to an institution for delinquent, unruly, neglected, abused, or dependent children

(3) a person committed by law to an institution for the mentally ill or the mentally retarded

Where we see this most:

- Mom and Dad have a child together but are never married. Mom and Dad have an "understanding" regarding shared parenting time/visitation. Mom gives child to Dad who then does not bring the child back when he's supposed to. Mom calls the police.

- Issues: If Mom and Dad are not married, then Mom has SOLE custody and rights to the child. It does not matter if Dad's name is on the birth certificate or if Mom swears that he is the father. It also does not matter if Mom gave child to Dad voluntarily. Unless Dad has gone to DR court and established paternity through the court system, he has NO legal rights to the child and must give the child back immediately. If Dad feels that the safety or welfare of his child is compromised by being with Mom, he can apply for emergency custody through DR court. Until then, he must give the child back to Mom. See **ORC 3109.042** Custody rights of unmarried mother: "An unmarried female who gives birth is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the sole residential parent and legal custodian…"
- If paternity has been established and there is a shared parenting or visitation schedule set up, and Dad has failed to return the child in accordance with the schedule, then Dad may be subject to a Contempt of Court action instead of criminal charges. This will be a case-by-case analysis based on any paperwork Mom can provide from DR court.
- Also keep in mind that what may look like an IWC could be a Kidnapping or Abduction instead.

MENACING BY STALKING (**MBS**) **2903.211**

"No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person" (A)(1) = M1

"No person, through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, shall post a message with purpose to urge or incite another to commit a violation of division (A)(1)" (A)(2) = M1

"No person, with a sexual motivation, shall violate (A)(1) or (2)" (A)(3) = M1

Enhancement: MBS can be an F4 if:

1. Offender has a previous MBS conviction
2. Offender made a threat of physical harm to or against the victim (or induced a 3rd party to make a threat of physical harm)
3. Offender trespassed on land of victim's home, work or school (or induced 3rd party to trespass)
4. Victim is a minor
5. Offender has history of violence toward victim OR any other person OR a history of other violent acts against victim or any other person
6. Offender had deadly weapon on or about his person or under his control at time of offense
7. Offender was subject to a protection order at time of the offense (victim of offense does NOT have to be the protected party)
8. Offender caused serious physical harm to property/premises of victim (any real/personal property or premises) or induced 3rd party to cause serious physical harm to same
9. Offender, prior to committing offense, had been determined to represent a substantial risk of physical harm as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and

serious physical harm, or other evidence of then-present dangerousness.
10. F5 if: Victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the victim's performance or anticipated performance of official responsibilities or duties UNLESS offender previously has been convicted of or pleaded guilty to an offense of violence and the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties then = F4

ORC Definitions:
(1) "Pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages or receipt of information or data through the use of an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device.

(2) "Mental distress" means any of the following:
(a) Any mental illness or condition that involves some temporary substantial incapacity;
(b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

Columbus City Attorney's Office Domestic Violence and Stalking Section (for Referrals)

Anne Murray is Section Chief 645-0314; Dave Fox (Cyber Crime) 645-3144, former CPD Officer Gilbert Leffler (Stalking) 645-6232 and Robin Williams (Southeast MH liaison) 645-6708.

CASE LAW EXAMPLES OF WHAT CONSTITUTES SUFFICIENT EVIDENCE OF MBS
Defendant's menacing by stalking conviction was supported by evidence that, over a three-day period, defendant damaged the victim's car, set fire to the car the following day, and called her and threatened to throw a Molotov cocktail into her apartment. **State v. Blackwell, 2012 Ohio App. LEXIS 2863, 2012 Ohio 3253, (July 19, 2012).**

State set forth sufficient evidence of the victim's mental distress to support defendant's conviction of menacing by stalking, as the victim stated several times during the victim's testimony that the victim felt threatened by defendant, including when the victim had the victim's child in the car with the victim and discovered defendant was following behind. **State v. Schmitz, 2012 Ohio App. LEXIS 2610, 2012 Ohio 2979, (June 29, 2012).**

State presented sufficient evidence to establish the existence of a pattern of conduct by defendant and that by engaging in that pattern of conduct defendant knowingly caused the

victim to believe that he would cause her physical harm as the evidence showed that defendant sent the victim, who was a stranger to him, a pornographic picture message and that he called ten days later to set up an appointment, using a false name, with the victim to view a house at night that she did not have listed. The victim testified that she was "petrified" and concerned that defendant was going to try to kill her due to the fact that the stranger who sent her a pornographic picture message contacted her again to meet with her alone at night. **State v. Willett, 2012 Ohio App. LEXIS 899, 2012 Ohio 1027, (Mar. 14, 2012).**

Consideration of two-year old incidents was not erroneous as the incidents were only mentioned by the magistrate to provide context for an understanding of how seemingly innocent incidents could be deemed threatening by the daughter. **Cooper v. Manta, 2012 Ohio App. LEXIS 760, 2012 Ohio 867, (Mar. 5, 2012).**

Sufficient evidence supported defendant's conviction for menacing by stalking because, while no direct threat was communicated in the letter or the phone call, there was evidence that defendant knowingly engaged in a pattern of conduct which caused the victim mental distress. After being warned by a deputy to let the victim alone, defendant called the jail and asked for the victim, who felt fearful in going about her daily activities, particularly leaving work late at night, because of her uncertainty about what defendant would do and where he was. **State v. Plants, 2010 Ohio App. LEXIS 2438, 2010 Ohio 2930, (June 22, 2010).**
(Apr. 30, 2010).

Police officer's conviction for menacing by stalking was affirmed because, despite defendant's contentions that all of the officer's contact with the victim was consensual, the victim testified that, although the victim was not interested in pursuing a romantic relationship with defendant, for a year and a half, defendant would frequently try to contact the victim by calling, stopping at the victim's house, or pulling the victim over in traffic. Moreover, after the victim filed a police report against defendant, defendant's superior officer ordered defendant to stay away from the victim, but two weeks later, police officers found defendant pounding on the victim's front door demanding to speak with the victim. **State v. Sanchez, 2010 Ohio App. LEXIS 3932, 2010 Ohio 4660, (Sept. 30, 2010).**

XVII. Assault on Police Officer

State v. Munoz, 2013 Ohio 4987 (10th App. Dist)

A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. When flailing one's arms while in close proximity to another (a detaining officer in this case), it is probable that one will strike the other.

This case highlights the importance of officers explaining why they believe a defendant acted knowingly. Here the officers explained that when they detained defendant, he made a physical move not to pull away, but rather one that seemed meant hit the officer in the head.

XVI. Child Enticement

***State v. Romage*, 2014-Ohio-783 (Ohio Supreme Court)**

[1]-Ohio's child-enticement statute, R.C. 2905.05(A), was declared unconstitutionally overbroad by the Ohio Supreme Court, because it sweeps within its prohibitions a significant amount of constitutionally protected activity; [2]-R.C. 2905.05(A) failed to require that the prohibited solicitation, coaxing, enticing, or luring occur with the intent to commit any unlawful act; [3]-Severance of the word "solicit" would not meet the Geiger test by transforming R.C. 2905.05(A) into a constitutional statute; [4]-Without a criminal-intent requirement, R.C. 2905.05(A) was not narrowly tailored to achieve the state's interest in protecting children.

R.C. 2905.05(A) forbids anyone other than the legal custodian of a child, those listed in R.C. 2905.05(A)(2), or those who have the legal custodian's express permission to solicit a child under the age of 14 to accompany the person "in any manner" for any purpose. The motivation for the solicitation is irrelevant. There is no requirement that the offender be aggressive toward the victim. One need not have intent to commit a crime. The Supreme Court of Ohio cannot construe R.C. 2905.05(A) in such a way as to find it constitutional

XVII. Officer Exposure to Bodily Substances

If an officer comes into contact with bodily substances in the manner described in O.R.C. 2981.38(B) (see below), a charge should be filed pursuant to this section. One, it is the correct charge for this conduct. Two, if you file this charge then the pursuant to O.R.C 2981.38(E) the offender shall be tested for various diseases upon request of the prosecutor or the law enforcement agency. We are over-simplifying a bit, but if someone intentionally spits in your face, bites you, urinates on you, throws feces on you, or otherwise intentionally causes you to come into contact with their bodily substances, they should be charged under this section.

§ 2921.38. Harassment with bodily substance

(B) No person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, shall cause or attempt to cause the law enforcement officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the law enforcement officer, by expelling the bodily substance upon the law enforcement officer, or in any other manner.

(D) Whoever violates this section is guilty of harassment with a bodily substance. A violation of division (A) or (B) of this section is a felony of the fifth degree. A violation of division (C) of this section is a felony of the third degree.

(E) (1) The court, on request of the prosecutor, or the law enforcement authority responsible for the investigation of the violation, shall cause a person who allegedly has committed a violation of this section to submit to one or more appropriate tests to determine if the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis.

XIX. Obstructing Official Business

1) We see obstructing charges filed when another charge, such as Failure to Disclose One's Personal Information, or Failure to Comply would be the better charge;

2) We see obstructing charges filed where there are simply not enough warnings given to the citizen prior to arrest. You should give as many warnings as is reasonably/safely possible to a citizen that they are obstructing you before you arrest. These warnings should be specific. For example: "You are yelling in my face and this is stopping me from doing field sobriety tests and you need to back away now or you will be arrested for obstructing." We stress multiple warnings for these reasons:

a) The prosecutor has to prove the defendant acted with purpose to prevent/obstruct/delay – it is much easier to prove a person acted with purpose if the person continues to obstruct after you have given them multiple warnings to stop; and

b) For someone to be guilty of obstructing, what they did has to have resulted in a substantial stoppage of your progress in the performance of your official duties. If you had to take time to give several warnings, and the person continued to obstruct, it is a lot easier to prove the person caused a substantial stoppage of your progress in conducting your official business.

***Columbus v. Wheat*, 2013 Ohio 2337 (10th App. Dist)**

Bear a few things in mind about obstructing: 1) a citizen must do something to obstruct – refusing to act is usually not obstructing. For example refusing to produce I.D. is not obstructing; 2) we still see obstructing filed when another charge fits. For example, failure to comply is the better charge in a traffic/pedestrian setting if a citizen disobeys your orders, and the stop and I.D. law (O.R.C. 2921.29) is the right charge if a suspect refuses to tell you their identifying information during a *Terry* stop; 3) If you believe someone is obstructing by what they are doing, and you can safely do so, you should warn them as much as possible to stop because they are impeding your ability to do your job. That way if they continue with their conduct, it will be clear they acted with purpose to obstruct. Obstructing cases are always better if warnings precede charge/arrest. In this case, defendant forcefully resisted getting a jaywalking citation, and tried to prevent the officers from doing their duty with respect to issuing that citation, and serving it on her.

XX. Placarded Structures

Columbus City Code 4703.01 defines as a "public nuisance" any vacant property, structure, etc. that has Building, Housing, Zoning or Nuisance Abatement Code violations. C.C. 4701.08 allows any public nuisance to be placarded against re-occupancy. C.C. 4707.07, an M-1, prohibits re-occupancy of a placarded building or structure without clearance from Code Enforcement.

Any vacant structure, whether it's a commercial building, a house, or an apartment, can be placarded as a public nuisance. Anyone found inside these placarded buildings can be arrested and charged with violating 4707.07 re-occupying that placarded structure. Also, and this is important, if you get called to a placarded structure, and a neighbor/witness indicates that a suspect has been in the placarded structure, but the suspect is not in the structure at that time, you can still charge the suspect. You of course could not arrest the suspect since the offense was not "on-view," but you could issue the suspect a summons if they can be located.

Unlike a criminal trespass, we do not need the property owner as the complaining witness to file these charges. What the affidavit must contain is the address of the property as well as the date it was posted -- this information will be written on the face of the placard. Also on the placard is the name of the Code Enforcement Officer that posted the property, this name must be listed in the witness box of your U-10-100 so that the prosecutor's office knows to subpoena them.

XXI. Shopkeeper's Privilege

***State v. Calliens*, 2012 Ohio 703 (8th App. Dist)**

The "shopkeeper's privilege" codified under R.C. 2935.041 provides as follows: (A) A merchant, or an employee or agent of a merchant, who has probable cause to believe that items offered for sale by a mercantile establishment have been unlawfully taken by a person, may, for the purposes set forth in R.C. 2935.041(C), detain the person in a reasonable manner for a reasonable length of time within the mercantile establishment or its immediate vicinity. R.C. 2935.041 does not operate to confer on the merchant or its employee the status of a law enforcement officer for the purposes of the Fourth Amendment. The Shopkeeper's privilege does not allow merchants or their security people to detain citizens who have committed minor misdemeanors or non-theft misdemeanors.

XXII. First Amendment Issues

Festivals/Fairs/Events Held on City Streets/Sidewalks or City Parks – If someone is exercising his or her 1st Amendment rights in the festival area, which also happens to be a City Street, sidewalk, or park, and they are not violating the law in some manner, that person should not be told to leave, or threatened with arrest for Criminal Trespass. This only applies to traditional public forums! If an organization is having an event on a completely private lot, or at a private facility, this doesn't apply, and the person can be treated as a trespasser and made to leave.

Signs -- Protesters can put up temporary non-obstructive items, such as crosses or signs, in the public right of way, and officers should not threaten the protestors with charge/arrest for doing so. If the items are not a safety hazard or obstruction, and are only used during the duration of the protest, they should not be disturbed. Protestors have no right to place items on purely private property—they only would have the right to place the items in the public right of way. The use of graphic or disturbing signs is generally 1st Amendment protected activity.

Noise -- If the noise/volume of protest activity is loud enough, and bothering enough person's of ordinary sensibilities, you could threaten to charge/charge protestors who are engaging in this conduct. In order for this charge to be legally appropriate, you must be charging the protestor for the volume of their speech/noise, and not for what they are saying. If you are going to charge, you should charge under 2329.11 Community Noise. Specifically, you should focus on the (C)(1) section of the noise ordinance which is basically the unreasonable to person of ordinary sensibility section.

Photographing and Videotaping – Protestors generally may videotape or photograph other citizens in public places. Citizens may videotape or photograph the police – this is 1st amendment protected activity. You should not tell a citizen to stop videotaping you! You of course can tell them to stay a safe distance from you as you perform your duties, but if they are a safe distance, you generally have no legal basis to order them to stop videotaping.

There may be times when you may collect video cameras as evidence, but tread carefully here: 1) Do you have PC to believe the camera contains evidence of the offense; 2) Do you plan on processing the camera as evidence meaning seek consent or get a search warrant; 3) Is it the best, primary or only evidence of the offense?

***Kennedy v. City of Villa Hills*, 635 F.3d 210 (2011)**

In the First Amendment context, even crass language used to insult police officers does not fall within the "very limited" unprotected category of "fighting words.

***Wilson v. Martin*, 2013 FED App. 0879N (6th Cir.)**

In the context of Ohio Rev. Code Ann. § 2917.11(A)(2) and (A)(3), profanity alone is insufficient to establish criminal behavior; instead, to violate either of these sections, a person must use profanity recklessly, in a situation where violence is a likely result. Where an 11-year-old girl was arrested after she extended both middle fingers toward two police officers and did not stop at their orders, the officers were not entitled to qualified immunity as to her Fourth Amendment claims for false arrest, false imprisonment, and unlawful seizure and detention, because the officers did not have probable cause to arrest her for disorderly conduct under Ohio Rev. Code Ann. § 2917.11(A)(2) and (A)(3) or obstructing official business under Ohio Rev. Code Ann. § 2921.21(A); The officers were not entitled to qualified immunity as to the girl's First Amendment retaliation claim, which alleged that they arrested her in retaliation for her

family's wrongful-death lawsuit concerning her mother's death, because the officers lacked probable cause to arrest her.

***Patrizi v. Huff*, 690 F.3d 459 (6th Cir. 2013)**

The U.S. Supreme Court has recognized First Amendment limitations on the conduct that state municipalities may outlaw with respect to interruption of police activity. The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers and the freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which the Supreme Court distinguishes a free nation from a police state. The Supreme Court has clearly established that nonaggressive questioning of police officers is constitutionally protected conduct.

The court found that the arrestee's actions did not constitute an affirmative act under the obstruction ordinance because the arrestee asked the officer questions in a calm and measured manner, she did not ignore instructions from the officer to cease her questioning, and she did not in any way exhibit aggressive, boisterous, or unduly disruptive conduct. Therefore, the officers lacked probable cause to arrest the arrestee. Furthermore, the officers lacked probable cause to believe that the arrestee was acting with the purpose of impeding their investigation of an alleged assault because the arrestee's actions demonstrated that her purpose was to ensure the respect of an individual's constitutional rights in the context of the citizen-police encounter.

***Glik v. Cunniffe*, 39 Media L. Rep. 2257 (1st Cir. 2011)**

A citizen's right to film government officials, including law enforcement officers, in the discharge of their duties in a public space was a basic, vital, and well-established liberty safeguarded by the First Amendment**.**

***Wilkerson v. Warner*, 2013 FED App. 0938N (6th Cir.)**

The elements of a First Amendment retaliation claim are as follows: (1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two-that is, the adverse action was motivated at least in part by the plaintiff's protected conduct.

The First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out. The first element of a First Amendment retaliation claim is that the individual was engaged in protected conduct. It is well-settled that the freedom to criticize public officials and expose their wrongdoing is a fundamental First Amendment value, indeed, criticism of the government is at the very center of the constitutionally protected area of free discussion. The First Amendment's protections are not limited to speech critical of public officials. To establish a First Amendment retaliatory prosecution claim, a plaintiff must prove "want of probable cause."

***McGlone v. Bell*, 681 F.3d 718 (6th Cir. 2012)**

The court ruled that the perimeter sidewalks and open areas of the campus constituted traditional public forums. Sidewalks have long been considered prototypical examples of traditional public fora. The burden is on the defendant to show that a sidewalk is overwhelmingly specialized to negate its traditional forum status. Where a private sidewalk blends into the urban grid, borders the road, and looks just like any public sidewalk, such a sidewalk is a traditional public forum. A plaintiff's desire to share his religious message through public speaking, one-on-one conversation, distribution of literature, and display of signs is protected First Amendment activity.

***Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013)**

Regarding whether begging is a form of solicitation that the First Amendment protects, the United States Court of Appeals for the Sixth Circuit holds that it is. A state may reasonably regulate begging.

XXIII. Second Amendment/Gun/CCW Issues

Open Carry

Open carry of a firearm in Ohio is not illegal by itself. No laws in Ohio prohibit a citizen from openly carrying a firearm in a public place unless there is some sort of a specific prohibition against carrying in that place (School Safety Zone, Courthouse, private business which prohibits firearms etc…).

Citizens also do not need a concealed carry permit to openly carry a firearm on their person in a public place – citizens do need a CCW permit to carry openly on their person in a motor vehicle.

The fact of open carry by itself would not be enough to support a stop/detention. However, the presence of an openly carried firearm combined with other facts might support a stop/detention.

Open carry by itself also would not support a charge of Disorderly Conduct or Inducing Panic. There must be additional facts beyond the open carry of the firearm to support such charges.

We also want to caution officers against charging such people with violations of the Stop and I.D law (ORC 2921.29). In order to charge someone for failing to give you their personal information (name, DOB, and address) you first must have reasonable suspicion that person has, is, or is about to commit a criminal offense.

Private businesses or property owners may prohibit all firearms on their property. They may post signs prohibiting firearms or they may order a person to leave for such behavior. If a person was on private property in violation of such a prohibition the proper charge would be criminal trespass

Gun Legislation/Changes to Gun Laws

Senate Bill 17 (Effective September 30, 2011)

A valid concealed carry license holder is permitted to possess a handgun in a D liquor permit premises. The license holder cannot consume beer or intoxicating liquor, and cannot be under the influence of alcohol or a drug of abuse. (R.C. 2923.121)

A valid concealed carry license holder can transport a handgun in a motor vehicle in any manner. (R.C. 2923.16)

House Bill 54 (Effective September 30, 2011)

Misdemeanor drug offenses no longer constitute a disability for purposes of Weapons Under Disability. (R.C. 2923.13)

House Bill 495 – Improperly Handling Firearms in a Motor Vehicle (March 27, 2013)

Definition of "Unloaded"

Creates the following definition of "unloaded" for purpose of Improperly Transporting Firearms in a Motor Vehicle:

"Unloaded" means that no ammunition is in the firearm in question, no magazine or speed loader containing ammunition is inserted into the firearm in question, and one of the following applies:

1. There is no ammunition in a magazine or speed loader that is in the vehicle in question and that may be used with the firearm in question, or

2. Any magazine or speed loader that contains ammunition and that may be used with the firearm in question is stored in a compartment within the vehicle in question that cannot be accessed without leaving the vehicle or is stored in a container that provides complete and separate enclosure.

A "container that provides complete and separate enclosure" includes, but is not limited to, any of the following:

1. A package, box, or case with multiple compartments, as long as the loaded magazine or speed loader and the firearm in question either are in separate compartments within the package, box, or case, or, if they are in the same compartment, the magazine or speed loader is contained within a separate enclosure in that compartment that does not contain the firearm and that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents or the firearm is contained within a separate enclosure of that nature in that compartment that does not contain the magazine or speed loader;

2. A pocket or other enclosure on the person of the person in question that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents.

Ammunition held in stripper-clips or in en-bloc clips is not considered ammunition that is loaded into a magazine or speed loader.

State Underground Parking Garage at the State Capitol Building or the parking garage at the Riffe Center for Government and the Arts

Specifies that any person may possess a firearm in a motor vehicle, or leave a firearm in a locked motor vehicle, in the State Underground Parking Garage at the State Capitol Building or the parking garage at the Riffe Center for Government and the Arts in Columbus, if the person's possession of the firearm in the vehicle is not in violation of the offense of improperly handling firearms in a motor vehicle or any other Revised Code provision

Gun Law/CCW Questions Over Past Year

Q This question just came up yesterday as officers and a prosecutor tried to sort out a case: How concealed must a weapon be to be considered "concealed" for the purposes of CCW law? In other words, if you encounter a citizen, and they have something on their person which you think could be a weapon, but you cannot really tell, can you charge them with CCW if it turns out they did have a weapon?

A. It depends. A weapon is concealed if the weapon is so situated as not to be discernable by ordinary observation. Absolute invisibility is not required. A weapon qualifies as being concealed if it is concealed or partially concealed so as to make it indiscernible as a weapon by ordinary observation. So, it depends on the facts, but a partially concealed weapon may qualify as concealed if you cannot discern what it is through ordinary observation. Also, keep in mind, if you conduct a *Terry* stop of a CCW permit holder, and the permit holder is carrying a weapon at that time, they must inform you of that fact immediately. (See O.R.C. 2923.12(B)(1).

Q. If you stop a motor vehicle for a traffic violation, and the driver of the stopped motor vehicle is a concealed carry permit holder who possesses a loaded handgun at the time of the stop, are they in compliance with O.R.C. 2923.16 if they hold their gun and permit out the window and shout, "officer, I am a permit holder with a gun" as you approach?

A. No. The Franklin County Court of Appeals just addressed this issue in *State v. Ashley*, 2013 Ohio App. LEXIS 4920. Pursuant to O.R.C. 2923.16(E)(4) the driver and/or the occupant of a motor vehicle, who have a concealed handgun license, are prohibited from having contact with the loaded handgun by touching it with their hands or fingers in the motor vehicle at any time after the law enforcement officer (LEO) begins approaching and before the LEO leaves unless told to do so by the LEO. It doesn't matter what the intention is of the person, or if they are trying to be helpful – they cannot have contact with the loaded handgun during their interaction

with you. It also doesn't matter if they had it in their lap at the time you stopped them – that is not an excuse or defense. They have to keep their hands off the handgun from the time you start approaching until you leave meaning that before you start approaching they should set the handgun down and out of contact if it was in their lap when you lit them up. Having contact with the handgun is a felony. Keep in mind that O.R.C. 2923.16(E)(1)-(5) contains all of the requirements for how a vehicle occupant who is a concealed carry permit holder, and who is transporting a loaded handgun in the motor vehicle, must act during a traffic stop.

Q. We were just asked this question: does ORC 2923.16 (Improper Handling of a Firearm in a Motor Vehicle) prohibit a concealed handgun permit holder from keeping a loaded rifle inside the passenger compartment of a vehicle?

A. Yes. A person may <u>not</u> carry a loaded rifle in the passenger compartment of a vehicle even if they have a concealed carry permit. Under O.R.C. 2913.16 if someone has a permit then sections (B) and (C) generally do not apply to them as to a handgun. (See ORC 2923.16(F)(5)). This means that a permit holder may carry a loaded handgun in the passenger compartment of their vehicles. However, a handgun is not a rifle. ORC 2923.11 defines "handgun" and "firearm" differently. "Handgun" is defined as "Any firearm that has a short stock and is designed to be held and fired by the use of a single hand." This definition excludes rifles. Therefore, sections (B) and (C) apply to someone possessing a loaded rifle, even if they possess a permit. So, they may not carry a loaded rifle in the passenger compartment.

Q. If a person has an unloaded handgun in their glove box, and a loaded clip for that handgun in the closed center console of the car, and they don't have a CCW permit, does this situation present a violation of O.R.C. 2923.16(B)? What about if they have the unloaded handgun in the glove box, and the loaded clip for the gun in a closed zippered backpack, which is in the car?

A. No, we don't think these are violations any longer. This can be debated, and many officers are uncomfortable with this answer, but we think the legislature now intends to view this scenario as not being a violation. ORC 2923.16(B) states that "No person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle." 2923.16(K)(5)(a) states-- "Unloaded" means,, with respect to a firearm other than a firearm described in division (K)(6) of this section, that no ammunition is in the firearm in question, no magazine or speed loader containing ammunition is inserted into the firearm in question , and one of the following applies:

(i) There is no ammunition in a magazine or speed loader that is in the vehicle in question and that may be used with the firearm in question.

(ii) Any magazine or speed loader that contains ammunition and that may be used with the firearm in question is stored in a compartment within the vehicle in question that cannot be accessed without leaving the vehicle or is stored in a container that provides complete and separate enclosure.

(b) For the purposes of division (K)(5)(a)(ii) of this section, a "container that provides complete and separate enclosure" includes, but is not limited to, any of the following:

(i) A package, box, or case with multiple compartments, as long as the loaded magazine or speed loader and the firearm in question either are in separate compartments within the package, box, or case, or, if they are in the same compartment, the magazine or speed loader is contained within a separate enclosure in that compartment that does not contain the firearm and that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents or the firearm is contained within a separate enclosure of that nature in that compartment that does not contain the magazine or speed loader;

(ii) A pocket or other enclosure on the person of the person in question that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents.

In our scenarios, the suspect was found with an unloaded firearm in a glove box, and with a loaded magazine in a closed separate center console or backpack, both of which would seem to satisfy the "container that provides complete and separate enclosure" requirement to make the gun "unloaded" for the purposes of O.R.C. 2923.16(B). If a gun is considered "unloaded" when it is in a package, and the clip is in the same package only separated from the gun by a zipper, then it seems that being in completely different/separate closed enclosures of the car very likely makes them "unloaded" as well.

Q. Is it illegal for a person to openly carry a rifle? Is it illegal for a person to openly carry a loaded handgun? Does a person need a CCW permit to openly carry on a street?

A. No, no, and no. Not unless the person carrying is in a prohibited place with the weapon or they are doing something with the weapon, such as brandishing or pointing, which could be illegal. Stated another way, the act of openly carrying a rifle, or a loaded handgun, is not by itself illegal in Ohio. One does not need a CCW permit to openly carry, as long as they are not in a vehicle.

Q. If you stop a person for a traffic offense, and as you approach the vehicle, the person announces I have a loaded handgun on the seat beside me, and a CCW permit, and they keep their hands on the steering wheel, have they violated the law?

A. No. O.R.C. 2923.16 (F)(5) states: Divisions (B) and (C) of this section do not apply to a person who transports or possesses a handgun in a motor vehicle if, at the time of that transportation or possession, both of the following apply: (a) The person transporting or possessing the handgun is carrying a valid concealed handgun license. (b) The person transporting or possessing the handgun is not knowingly in a place described in division (B) of section 2923.126 of the Revised Code. So, if they have a CCW permit, aren't in a prohibited

place, don't touch the gun, and properly announce to you that they possess a gun/permit, then they haven't violated the law even if that loaded handgun is sitting two inches from them on the front-seat.

Q. Has "stand your ground" passed or become law in Ohio?

A. Not yet. H.B. 203 is currently pending before the State Legislature. It would make the following changes, which basically create a "stand your ground" type law in Ohio.

Sec. 2901.09

~~A) As used in this section, "residence" and "vehicle" have the same meanings as in section 2901.05 of the Revised Code.~~ ~~(B)~~ For purposes of any section of the Revised Code that sets forth a criminal offense, a person ~~who lawfully is in that person's residence~~ has no duty to retreat before using force in self-defense, defense of another, or defense of that person's residence~~, and a person who lawfully is an occupant of that person's vehicle or who lawfully is an occupant in a vehicle owned by an immediate family member of the person has no duty to retreat before using force in self-defense or defense of another~~ <u>if that person is in a place that the person lawfully has a right to be</u>.

Q. Is one disqualified under federal gun laws if they have been convicted of domestic violence?

A. Under 18 USC 922, they are disqualified if they "have been convicted in any court of a misdemeanor crime of domestic violence." Section 921(a)(33)(A) defines domestic violence as a crime that is a misdemeanor under state law, and "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." The Sixth Circuit has recently held, in *United States v. Castleman*, 695 F.3d 582 (6th Cir. 2012), that to categorically meet the definition of "misdemeanor crime of domestic violence" in Section 921(a)(33)(A), a state crime must require "*violent* force . . . [force] capable of causing physical pain or injury to another person." *United States v. Sanford*, 2013 FED App. 0022P (6th Cir. 2013). Therefore, the misdemeanor crime of domestic violence must be more than mere "touching" to disqualify one under federal law

XXIV. Exculpatory Evidence

***Elkins v. Summit County*, 2010 FED App. 0235P (6th Cir.)**

If officers have in their possession a piece of evidence that might be expected to play a significant role in the suspect's defense, the officers have a constitutional duty to preserve that evidence, and give it to the prosecutor. If an officer fails to pass on exculpatory evidence they can face civil liability. This case is a warning to agencies like CPD. If there are systems in place

for patrol officers to provide information/evidence to detectives, and patrol officers use those systems to get such evidence to the detectives, and the evidence is exculpatory, the detective has a duty to pass the information onto the prosecutor.

***Provience v. City of Detroit*, 2013 FED App. 0632N (6th Cir.)**

A prosecutor's suppression of evidence favorable to the accused violates due process where the evidence is material and exculpatory. The constitutional principles recognized in *Brady* apply just as equally to similar conduct on the part of police, and thus support that the police can commit a constitutional deprivation analogous to that recognized in Brady by withholding or suppressing exculpatory material.

XXV. Civil Liability Related to Cruiser Accidents

***Stevens v. Maxson*, 2013-Ohio-5792 (10th App. Dist)**

R.C. 2744.02(B)(1) addresses the liability of a political subdivision and full defenses for the operation of a motor vehicle by employees. R.C. 2744.02(B)(1) provides in part that political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. R.C. 2744.02(B)(1)(a), however, provides a full defense to political subdivision's liability when a member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct.

R.C. 2744.03(A)(6)(b) provides immunity for an employee of a political subdivision who acts within the scope of his or her duties unless the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner.

***Colbert v. City of Cleveland* (2003), 99 Ohio St. 3d 215**

"Emergency call' means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer." A "call to duty" involves a situation to which a response by a peace officer is required by the officer's professional obligation.

***Robertson v. Dep't of Pub. Safety*, 2007-Ohio-5080**

Competent, credible evidence supported the finding that the trooper engaged in wanton misconduct. The trial court held that the trooper failed to show any care for the decedent when he sped into the intersection against a red light. The trooper owed the decedent and all other drivers a duty to slow down as necessary for safety to traffic and to proceed cautiously past a red light with due regard for the safety of all persons using the street or highway

Based upon the circumstances, driving into the intersection at over 70 miles per hour demonstrated a perversity that rose to the level of wanton misconduct. The trooper's wanton misconduct did not stem from his decision to enter the intersection, but rather, from his excessive speed as he did so.

§ 4511.041. Exceptions for emergency or public safety vehicle responding to emergency call

Sections 4511.12 etc… do not apply to the driver of an emergency vehicle or public safety vehicle if the emergency vehicle or public safety vehicle is responding to an emergency call, is equipped with and displaying at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle and if the driver of the vehicle is giving an audible signal by siren, exhaust whistle, or bell. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with **due regard** for the safety of all persons and property upon the highway.

§ 4511.03. Emergency vehicles to proceed cautiously past red or stop signal

(A) The driver of any emergency vehicle or public safety vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety to traffic, but may proceed cautiously past such red or stop sign or signal with due regard for the safety of all persons using the street or highway

XXVI. Miscellaneous Legislation Impacting Patrol

Columbus City Code Changes

2317.50 - Loitering in aid of drug offenses

(A) No person, while in or about a public place, shall do any of the following with purpose to commit or aid the commission of a drug abuse offense:
(1) Repeatedly beckon, stop, attempt to stop, or engage passers-by or pedestrians in conversation; or
(2) Repeatedly stop or attempt to stop motor vehicles; or
(3) Repeatedly interfere with the free passage of other persons; or
(4) Direct pedestrians or motorists through words, hailing, waving of arms, pointing, signaling or other bodily gestures to a person or premises where controlled substances are possessed or sold; or
(5) Transfer small objects or packages in a furtive or surreptitious fashion in exchange for currency or any other thing of value, such as to lead an observer to believe or ascertain that a drug sale has or is about to occur; or
(6) Act as a lookout by communicating the fact that law enforcement officers are in the vicinity to another person, in a manner which suggests that the communication is a warning.

(B) For purposes of this section, the term "drug abuse offense" has the same meaning as found in Section 2925.01(G) of the Revised Code. The term has the same meaning as "controlled substance" as found in Section 3719.01(C) of the Revised Code.

(C) For purposes of this section, the term "public place" means an area of property, either publicly owned or to which the public has access, and includes but is not limited to streets, alleys, sidewalks,

rights of way, bridges, plazas, parks, driveways, parking lots, transportation facilities, or other place open to the public, the doorways, entrances, porches, passageways, and roofs to any such building which fronts on any of the aforesaid places, or motor vehicles in or upon such places.

(D) No arrest shall be made for a violation of this section until the arresting officer first requests and affords such person an opportunity to explain such conduct. No person shall be convicted if it appears that the explanation rendered is true and the surrounding circumstances disclosed a lawful purpose.

(E) (1)Whoever violates this section is guilty of loitering in aid of drug offenses, a misdemeanor of the first degree.

(2) If the offense occurred in a school building, on school premises, or within one thousand (1,000) feet of the boundaries of school premises, public library premises, community center premises, or playground premises, then the court shall impose a mandatory jail term of at least ten (10) consecutive days during which mandatory jail term the defendant shall not be eligible for work release.

Ordinance 1726-2012 (September 4, 2012)

Commercial Sales License

Replaces the current Peddlers License scheme with a Commercial Sales License. Requires any person who engages in the act of peddling, soliciting or canvassing to obtain a commercial sales license from the Public Safety License Section. Requires any business that causes or permits a person to engage in peddling, soliciting or canvassing, to obtain a commercial sales promoter's license from the Public Safety License Section.

Exempts the following organizations and individuals from the requirement to obtain a commercial sales license and/or commercial sales promoter's license:

1. State and local governmental departments, agencies and subdivisions, including public schools;
2. State accredited private schools and academies;
3. Civic, patriotic, religious and political groups, recreational, fraternal or cultural organizations;
4. Any activity or gathering or assemblage of people upon the public right-of-way for which a block party permits or street closure permit has been issued;
5. Any organization's bona fide officer or employee that holds a valid charitable solicitation license;
6. A person who does not go place to place and who sell items they grow, raise or manufacture on private property. However, this person must be able to prove, preferably in writing, that they have permission from the property owner to sell.

Any license officer or law enforcement officer may require individuals or organizations claiming any exemption to present evidence in support of such claimed exemption.

Display of identification card

Any person possessing a commercial sales license and/or a commercial sales promoter's license shall display their identification card in a prominent manner while engaged in peddling, soliciting or canvassing. The card shall be subject to inspection, upon demand, by any license officer, law enforcement officer or by any person engaged in business with the peddler, solicitor or canvasser.

Street, road and alley operation

No person shall engage in peddling, soliciting or canvassing upon a street, road, alley or service road or the public property (excepts as permitted on sidewalks below) alongside a street road, alley or service road.

No person shall park any vehicles, pushcarts or concession trailers of any type on street metered parking spaces for the purpose of engaging in peddling, soliciting or canvassing.

Sidewalk operation

Peddlers, solicitors or canvassers (except those possessing a licensed pushcart) shall comply with the following provisions while operating upon a sidewalk:

1. Merchandise shall be continuously carried physically by a licensed peddler, solicitor or canvasser.
    a. Peddlers, solicitors or canvassers shall not stand or remain stationary unless actively engaged in making a sale.
    b. Merchandise may be placed on the ground when actively engaged in making a sale.
2. Peddlers, solicitors or canvassers confined to a wheelchair or what have a physical disability, which makes it impractical to physically carry merchandise for sale or barter continuously, may have two containers not larger than twelve inches and may be placed on the ground next to the wheelchair.
3. Shall maintain a distance of five feet of sidewalk space from the sidewalk curb;
4. Shall maintain a distance of twenty feet from an intersection with a street, road or alley;
5. Shall maintain a distance of ten feet from a pedestrian crosswalk or intersecting sidewalk;
6. Shall maintain a distance of ten feet from a taxi stand, sidewalk elevator, tunnel or mailbox;
7. Shall maintain a distance of ten feet from a fire hydrant;
8. Shall no obstruct a loading zone, telephone booth, traffic control box, fire alarm box, parking meter, any sidewalk fixture or furniture, bust stop or a legally parked vehicle;
9. Shall not obstruct any display windows or doorways of any merchant;
10. Shall not use a power generator of any type or a power cord of any type;
11. Shall not obstruct pedestrian or vehicular traffic;
12. Shall not obstruct or interfere with public works or construction projects;
13. Shall during the period of selling keep the area within 25 feet of that location free from all litter and debris arising from selling.
14. Shall not display or advertise from any utility pole, sign, tree, planter, trash container, parking meter, bridge, newspaper stand, sidewalk fixtures or furniture, portable signs of any type, traffic control box, motor vehicle, bicycle or any other type of motorized conveyance, or any other criteria deemed reasonable inappropriate by a license officer or police officer for the public health, welfare and safety;
15. Shall not use or store merchandise or services from any box, bucket, coller, tub or any other container, table, chair, bench cabinet or any other furniture, racks, dolly, wheelbarrow, grocery cart, baby carriage, stroller, easel, handcart or any other criteria deemed reasonably inappropriate by a license officer or police officer, for the public health, welfare and safety;
16. Shall not use any signage upon the public right-of-way of any street, road, alley, sidewalk or bikeway except within the boundaries of a special event.
17.

Obstruction of public right-of-way

No peddler, solicitor or canvasser shall obstruct pedestrian or vehicular traffic upon any sidewalk, driveway, street, road, alley or other public right-of-way. Peddlers, solicitors or canvassers leaving less than five feet of space available for pedestrian traffic on a sidewalk shall be considered obstruction of pedestrian traffic.

Prohibited acts and hours of operation

No peddler, solicitor or canvasser shall:

1. Operate between the hours of 6:00 p.m. and 9:00 a.m. when engaged in peddling, soliciting or canvassing door-to-door in areas zoned residential;
2. Enter a private residence under pretenses other than for peddling soliciting or canvassing;
3. Fail, or refuse to leave peacefully private property immediately after the owner, occupant, landowner's agent or representative has requested to do so;
4. Enter upon the land of a private residence or multi-unit property to peddle, solicit or canvass when the owner or occupant has displayed a "no peddling". "no soliciting" or "no canvassing" sign.
5. Peddle, solicit or canvass in city parks, to the extended that these activities are regulated under the Columbus City Code;
6. Sell, offer for sale, barter, or carry for sale or barter or expose for sale any merchandise or services on private property unless express written permission has been granted by the property owner or agent authorized to do so, Written permission shall be furnished upon application or at the request of any license officer or police officer.

Penalties

Any business or person who engages in peddling, soliciting or canvassing, who does not fall within an exception listed above, is guilty of an M3. Subsequent offenses are an M2.

Any business or person who violates any other section of the Commercial Sales License chapter is guilty of an M4. Subsequent offenses are an M3.

Ordinance 1465-2012 (August 18, 2012)

Parking Prohibitions in Specified Places

Amends 2151.01(1) to prohibit parking on a shared-use path, curb or street lawn area between a curb and right of way line, and upon a bike path.

Parking Infraction Fines

Amends 2150.10 to reflect appropriate fines for above listed violations.

Ohio Revised Code

Senate Bill 305 (September 28, 2012)

Operating a vehicle with a hidden compartment

Creates the new offense of "operating a vehicle with a hidden compartment used to transport a controlled substance." The offense generally prohibits:

1. Any person from knowingly designing, building, constructing, or fabricating a vehicle with a hidden compartment, or modifying or altering any portion of a vehicle to create or add a hidden compartment, with the intent to facilitate the unlawful concealment or transportation of a controlled substance, or

2. Any person from knowingly operating, possessing, or using a vehicle with a hidden compartment with knowledge that the hidden compartment is used or intended to be used to facilitate the unlawful concealment or transportation of a controlled substance.
3. Any person who has been convicted of or pleaded guilty to the offense of "aggravated trafficking in drugs" when the offense is a first or second degree felony from operating, possessing, or using a vehicle with a hidden compartment.

The following persons/activities are exempted from this offense:

1. Law enforcement officers,
2. Licensed motor vehicle dealers or manufacturers that repair, purchase, receive in trade, lease, or sell a motor vehicle, and
3. A box, safe, container, or other item added to a vehicle for securing valuables, electronics, or firearms and does not contain a controlled substance or controlled substance residue that is visible.

"Operating a vehicle with a hidden compartment used to transport a controlled substance" is generally an F4. It's an F3 if the suspect has previously violated this section. It's an F2 if drugs are found in the hidden compartment. (R.C. 2923.241)

Senate Bill 337 (September 28, 2012)

Drug paraphernalia

Reduces the penalty for possession of marijuana drug paraphernalia from an M4 to an MM. (R.C. 2925.14 & 2925.141)

Failure to comply with an order or signal of a police officer

Reduces the driver's license suspension for misdemeanor violations of "failure to comply with an order or signal of a police officer", and authorizes limited driving privileges during the suspension. (R.C. 2921.331)

House Bill 99 (August 31, 2012)

Please note that these offenses do not impact officers' ability to enforce Columbus's texting while driving ban, which is section 2131.44 of the City Code.

Statewide texting while driving ban

Creates a new offense that prohibits driving a vehicle while using a handheld electronic communications device to write, send, or read a text-based communication. It's a secondary traffic offense.

There are ten exemptions to the offense:

1. A person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;
2. A person driving a public safety vehicle who uses a handheld electronic wireless communications device in that manner in the course of the person's duties;
3. A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

4. A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;
5. A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle;
6. A person receiving wireless messages via radio waves;
7. A person using a device for navigation purposes;
8. A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;
9. A person operating a commercial truck while using a mobile data terminal that transmits and receives data;
10. A person using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle. (R.C. 4511.204)

Underage use of electronic communications device while driving

Prohibits a person under 18 from using, in any manner, an electronic wireless communications device while driving. It's a primary traffic offense.

There are three exemptions to this offense:

1. A person using an electronic wireless communications device for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;
2. A person using an electronic wireless communications device whose motor vehicle is in a stationary position and the motor vehicle is outside a lane of travel;
3. A person using a navigation device in a voice-operated or hands-free manner who does not manipulate the device while driving. (R.C. 4511.205)

Penalties

First offenses carry a mandatory $150 fine and 60 day license suspension. Subsequent offenses carry a mandatory $300 fine and one year license suspension.

Until March 1, 2013, no ticket, citation, or summons may be issued for a violation of either prohibition established by the act, only a warning that provides information about the prohibition.

House Bill 262 (June 27, 2012)

Human Trafficking

General

Requires each agency that investigates trafficking in persons or acts of human trafficking to collect and submit to the Bureau of Criminal Identification and Investigation certain specified types of information. (R.C. 109.66)

Requires the Attorney General to provide training for peace officers in investigating and handling trafficking in persons violations and specifies required types of training.

Creates the Victims of Human Trafficking Fund with money obtained under the forfeiture law to help fund services for victims of human trafficking.

Creates a civil cause of action for victims of trafficking in persons.

Creates a procedure through which a person may have the record of a conviction or delinquent-child adjudication expunged if the conviction or adjudication was for a prostitution-related offense or act and the person's participation in that offense or act was a result of the person's having been a victim of human trafficking. (R.C. 2151.358 & 2953.38)

Increased penalties

Increases the penalty for trafficking in persons from an F2 to an F1. (R.C. 2905.32)

Creates a new section of importuning which generally prohibits soliciting a sixteen or seventeen year old, who has been the victim of human trafficking, to engage in sexual conduct. Violations of this section are an F5. (R.C. 2907.07)

Increases the penalty for procuring prostitution from an M1 to an F4 or F5 when the prostitute is sixteen or seventeen years old. (R.C. 2907.23)

Increases the penalty for obstruction of justice to an F2 if the person who is aided by the obstruction committed trafficking in persons or committed an act that would be trafficking in persons if the person were an adult. (R.C. 2921.32)

Requires offenders convicted of promoting prostitution or of trafficking in persons for sex-related purposes to register as sex offenders. (R.C. 2905.32 & 2950.01)

Senate Bill 223 (June 8, 2012)

Telecommunications fraud

Changes the increased penalties for "telecommunications fraud" so that: (1) if the value of the benefit obtained by the offender or of the detriment to the victim of the fraud is $1,000 or more but less than $7,500, telecommunications fraud is a fourth degree felony, (2) if the value or the detriment is $7,500 or more but less than $150,000, it is a third degree felony, (3) if the value of the benefit or detriment is $150,000 or more but less than $1 million, it is a second degree felony, and (4) if the value of the benefit or detriment is $1 million or more, it is a first degree felony. (R.C. 2913.05)

Provides that, if an offender commits the offense as part of a course of conduct involving other specified theft-related or fraud-related offenses, the court, in determining the degree of the offense, may aggregate the value of the benefit obtained by the offender or of the detriment to the victim of the fraud in the offenses involved in that course of conduct. (R.C. 2913.05)

Specifies that, if the Attorney General (the AG) has reasonable cause to believe that a person or enterprise has engaged in, is engaging in, or is preparing to engage in "telecommunications fraud," "unauthorized use of property," "unauthorized use of computer, cable, or telecommunications property," "unauthorized use of the law enforcement automated data system," or "unauthorized use of the Ohio law enforcement gateway," the AG may investigate the alleged violation. (R.C. 109.88)

House Bill 20 (June 4, 2012)

Witness intimidation

Amends the first degree misdemeanor prohibition of "intimidation of an attorney, victim, or witness in a criminal case" to prohibit a person from knowingly attempting to intimidate or hinder the victim of a crime *or delinquent act* in the filing or prosecution of criminal charges *or a delinquent child action or proceeding* or knowingly attempting to intimidate a witness *to a criminal or delinquent act by reason of the person being a witness to that act*. (R.C. 2921.04)

Amends the third degree felony prohibition of "intimidation of an attorney, victim, or witness in a criminal case" to prohibit a person, knowingly and by force or by unlawful threat of harm to any person or property *or by unlawful threat to commit any offense or calumny against any person*, from attempting to influence, intimidate, or hinder *any of the following persons: (1)* the victim of a crime *or delinquent act* in the filing or prosecution of criminal charges *or a delinquent child action or proceeding*, (2) a witness to a criminal *or delinquent act by reason of the person being a witness to that act*, or (3) an attorney *by reason of the attorney's involvement in* any criminal *or delinquent child* action or proceeding. (R.C. 2921.04)

House Bill 14 (May 22, 2012)

Classification of nuisance, dangerous and vicious dogs

Requires municipal courts to hold hearings to determine whether certain dogs are a "nuisance dog", a "dangerous dog" or a "vicious dog". Establishes various duties on the dog's owner; such as method of confinement, insurance requirements, and licensing requirements; depending on the outcome of the hearing.

Repeals the statement that a pit bull dog is *prima facie* evidence of a vicious dog. (R.C. 955.11)

Prohibition against certain felons owning certain dogs

Prohibits a person who has been convicted of or pleaded guilty to a felony offense of violence or a felony violation of any provision of R.C. Chapter 959. (offenses relating to domestic animals), 2923. (conspiracy, attempt, and complicity; weapons control; corrupt activity), or 2925. (drug offenses) from knowingly owning, possessing, having custody of, or residing in a residence with an un-spayed or unneutered dog older than 12 weeks of age, or any dog that has been determined to be a dangerous dog for a specified three-year period. Specifies that the three-year period commences either upon the date of release of the person from any period of incarceration imposed for the offense or violation or, if the person is not incarcerated for the offense or violation, upon the date of the person's final release from the other sanctions imposed for the offense or violation. Specifies that the prohibition does not apply to a person who is confined in a correctional institution or to a person with respect to any dog that the person owned, possessed, had custody of, or resided in a residence with prior to the act's effective date. A violation of the prohibition is a first degree misdemeanor. (R.C. 955.54 & 955.99)

House Bill 7 – Gambling Law – Internet Sweepstakes (September 4, 2013)

Certificate of Registration

Prohibits any person from conducting, or participating in the conduct of, a sweepstakes with the use of a "sweepstakes terminal device" at a "sweepstakes terminal device facility" without first obtaining a current annual "certificate of registration" from the attorney general.

Prohibited Prizes

Prohibits any person from conducting, or participating in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility and either:

1. Giving to another person any of the following items, or a redeemable voucher for any of the following items, as a prize for playing or participating in a sweepstakes:

    a. Cash, gift cards, or any equivalent thereof;
    b. Plays on games of chance, state lottery tickets, bingo, or instant bingo;

    c. Firearms, tobacco, or alcoholic beverages.

2. Giving to another person any merchandise prize, or a redeemable voucher for a merchandise prize, the wholesale value of which is in excess of ten dollars and which is awarded as a single entry for playing or participating in a sweepstakes.

Definitions

"Sweepstakes terminal device" means a mechanical, video, digital, or electronic machine or device that is owned, leased, or otherwise possessed by any person conducting a sweepstakes, or by that person's partners, affiliates, subsidiaries, or contractors, that is intended to be used by a sweepstakes participant, and that is capable of displaying information on a screen or other mechanism. A device is a sweepstakes terminal device if any of the following apply:

1. The device uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.

2. The device utilizes software such that the simulated game influences or determines the winning of or value of the prize.

3. The device selects prizes from a predetermined finite pool of entries.

4. The device utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.

5. The device predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.

6. The device utilizes software to create a game result.

7. The device reveals the prize incrementally, even though the device does not influence the awarding of the prize or the value of any prize awarded.

8. The device determines and associates the prize with an entry or entries at the time the sweepstakes is

entered.

"Enter" means the act by which a person becomes eligible to receive any prize offered in a sweepstakes.

“Entry" means one event from the initial activation of the sweepstakes terminal device until all the sweepstakes prize results from that activation are revealed.

"Prize" means any gift, award, gratuity, good, service, credit, reward, or any other thing of value that may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

“Sweepstakes terminal device facility" means any location in this state where a sweepstakes terminal device is provided to a sweepstakes participant, except locations that have obtained a certificate of compliance from the Ohio Attorney General stating that the person is not operating a sweepstakes terminal facility.

Amended definition of “scheme of chance”

Amends the definition of "scheme of chance" to include the use of an electronic device to reveal the results of a game entry if valuable consideration is paid, directly or indirectly, for a chance to win a prize. Valuable consideration is deemed to be paid for a chance to win a prize in the following instances:

1. Less than fifty per cent of the goods or services sold by a scheme of chance operator in exchange for game entries are used or redeemed by participants at any one location;

2. Less than fifty per cent of participants who purchase goods or services at any one location do not accept, use, or redeem the goods or services sold or purportedly sold;

3. More than fifty per cent of prizes at any one location are revealed to participants through an electronic device simulating a game of chance or a "casino game";

4. The good or service sold by a scheme of chance operator in exchange for a game entry cannot be used or redeemed in the manner advertised;

5. A participant pays more than fair market value for goods or services offered by a scheme of chance operator in order to receive one or more game entries;

6. A participant may use the electronic device to purchase additional game entries;

7. A participant may purchase additional game entries by using points or credits won as prizes while using the electronic device;

8. A scheme of chance operator pays out in prize money more than twenty per cent of the gross revenue received at one location; or

9. A participant makes a purchase or exchange in order to obtain any good or service that may be used to facilitate play on the electronic device.

Senate Bill 7 – Registry of Offenders Receiving Mental Health Treatment (September 4, 2013)

Requires a court to report information to the local law enforcement agency where a crime occurred in the following situations:

1. The court orders a mental health evaluation, or treatment for a mental illness, for a person who pleads guilty to, or who is convicted of, an offense of violence.

2. The court approves a conditional release for a person found incompetent to stand trial and committed, or a person found not guilty by reason of insanity and committed.

Requires the law enforcement agency to enter the information into the National Crime Information Center Supervised Release File.

Senate Bill 64 – Criminal Child Enticement (July 11, 2013)

Amends the offense of criminal child enticement to specify that no person, for any unlawful purpose, shall knowingly solicit, coax, entice, or lure any child under fourteen years of age to accompany the person in any manner, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child, if both of the following apply:

1. The actor does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity.

2. The actor is not a law enforcement officer, medic, firefighter, or other person who regularly provides emergency services, and is not an employee or agent of, or a volunteer acting under the direction of, any board of education, or the actor is any of such persons, but, at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

House Bill 62 – Assault Committed Against Hospital Personnel or Justice System Personnel (March 22, 2013)

<u>Assault committed against hospital personnel</u>

Increases the penalty for assault to a fifth degree felony when all of the following occur:

1. The victim is a hospital health care professional, health care worker, or security officer whom the offender knows or has reasonable cause to know is such a professional, worker, or officer;

2. The victim is engaged in the performance of his or her duties;

3. The hospital offers de-escalation or crisis intervention training for such professionals, workers, and officers; and

4. The offender previously was convicted of an assault offense committed against hospital personnel.

<u>Assault committed against justice system personnel</u>

Increases the penalty for assault to a fifth degree felony when all of the following occur:

1. The victim is a judge, magistrate, prosecutor, or court official or employee whom the offender knows

or has reasonable cause to know is a judge, magistrate, prosecutor, or court official or employee;

2. The victim is engaged in the performance of his or her duties;

3. The offender previously was convicted of an assault offense committed against justice system personnel.

House Bill 334 – Pseudoepherdrine/Ephedrine Sales – Controlled Substance Analogs – Synthetic Marijuana – Bath Salts (December 20, 2012 / March 20, 2013)

Pseudoephedrine products and ephedrine products

Generally requires that retailers and terminal distributors of dangerous drugs participate in electronically tracking over-the-counter pseudoephedrine and ephedrine product sales through the National Precursor Log Exchange.

Regulates over-the-counter sales of ephedrine in the same manner that over-the-counter sales of pseudoephedrine products have been regulated.

Imposes daily limits consistent with federal law on the amount of pseudoephedrine products and ephedrine products that an individual may purchase or receive without a prescription.

Controlled substance analogs

Creates the offenses of trafficking in, and possession of, controlled substance analogs. A "controlled substance analog is a substance to which both of the following apply:

1. The chemical structure of the substance is substantially similar to the structure of a controlled substance in schedule I or II.

2. One of the following applies regarding the substance:

    a. The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.
    b. With respect to a particular person, that person represents or intends the substance to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

Ohio's controlled substances schedules – synthetic marijuana / bath salts

Removes five synthetic cannabinoids (commonly referred to as "spice") from Ohio's list of schedule I hallucinogenic substances and, in place of these, adds certain groups of synthetic cannabinoids to this schedule.

Removes six synthetic derivatives of cathinone found in bath salts from Ohio's list of schedule I hallucinogenic substances, and removes cathinone and methcathinone from Ohio's list of schedule I stimulants. In place of these, adds substituted cathinones to Ohio's list of schedule I stimulants.